CLIENT SERVICE AND COMPLIANCE MANUAL

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SUBPART 1100 ELIGIBILITY STANDARDS AND GUIDELINES

1101. U. S. Citizenship/Eligible Not Fully-Documented Person

a. All clients accepted for service with Legal Services Corporation ("LSC") funds must be either a U. S. Citizen or an eligible not fully-documented person. A list of the standard eligibility categories for not fully-documented persons is on the LSA not fully-documented person representation form and further set out below in sections 1101b and 1101c. See also LSC regulation 45 C.F.R. Subpart 1626 and LSC Program Letters 05-2 and 06-2.

b. Pursuant to the 2005 reauthorization of the Violence Against Women Act (Violence Against Women and Department of Justice Reauthorization Act of 2005, P.L. 109-162 (H.R. 3402)), Legal Services Alabama (LSA) may use LSC or other funds to provide representation to a not fully-documented person who has been battered, subjected to extreme cruelty, or is a victim of sexual assault or trafficking in the United States, or who qualifies for U-visa immigration relief pursuant to 8 U.S.C. § 1101(a)(15)(U) and 8 U.S.C. § 1184(p). Furthermore, LSA may also provide representation to a not fully-documented person whose child, without the active involvement of the not fully-documented person parent, has been battered or subjected to extreme cruelty, is a victim of sexual assault or trafficking in the United States, or qualifies for U-visa immigration relief in his or her own right.

1. Definitions

(a) The term "battered or subjected to extreme cruelty" is defined as being the victim of any act or threatened act of violence, including psychological or sexual abuse, and other acts such as stalking that may not initially appear violent but are part of an overall pattern of violence. See 45 C.F.R. § 1626.2(f).
(b) The term "sexual assault" describes any conduct prescribed by chapter 109A or title 18, United States Code, and includes assaults committed by strangers or those who are related by blood or marriage to the victim.
(c) The term "trafficking" is used to include any conduct that is included within the scope of the Trafficking Victims Protection Reauthorization Act of 2003 (22 U.S.C. § 7105(b)(1)).
(d) A person "qualifies for U-visa immigration relief" if she or her child is the victim or intended victim of rape, torture, trafficking, incest, domestic violence, sexual assault, abusive sexual contact, prostitution, sexual exploitation, female genital mutilation, being held hostage, peonage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, blackmail, extortion, manslaughter, murder, felonious assault, witness tampering, obstruction of justice, perjury, or attempt, conspiracy, or solicitation to commit any of these enumerated crimes or similar offenses as defined by federal, state, or local criminal laws.

2. Use of LSC funds

(a) LSA may use LSC funds to provide legal services to VAWA-qualified not fully-documented persons in obtaining relief that is directly related to the prevention of or to obtain relief from the enumerated conduct set out above.
(b) Within the scope of its established priorities, LSA may use LSC funds to provide legal services to VAWA-qualified not fully-documented person to ameliorate the effects of the enumerated conduct or to protect against the likelihood of further victimization. See 45 C.F.R. § 1626.2(g).
(c) LSA may use LSC funds to provide legal services to VAWA-qualified not fully-documented persons in obtaining legal status in the United States through petitions for a U-visa, self-petition (8 U.S.C. § 1154(a)(1)(A)(iii), or a T-visa (8 U.S.C. § 1101(a)(15)(T) and 8 U.S.C. § 1184(o), in requesting an adjustment of status, and in obtaining work authorization.

3. LSA may use LSC funds to provide legal services to a VAWA-qualified not fully-documented person regardless of her relationship to the perpetrator.

4. LSA can document a not fully-documented person client's eligibility by showing that the client is a victim of a VAWA-qualifying offense or conduct and need not maintain records regarding the immigration status.

5. If LSA is representing a VAWA-qualified not fully-documented person and her petition for a U-visa, self-petition, or T-visa is denied, LSA must attempt to discontinue representation in accordance with the rules of professional conduct, unless the client is otherwise eligible for representation.

6. Any advocate seeking to represent a client pursuant to the provisions of VAWA 2005 must obtain written approval from the Domestic Violence Advocacy Director or the Director of Advocacy. Use the form Representation of Not fully-documented person Clients Pursuant to the Violence Against Women and Department of Justice Reauthorization Act of 2005.

c. Pursuant to the Trafficking Victims Protection Reauthorization Act of 2003 (22 U.S.C. §7105(b)(1)), Legal Services Alabama (LSA) may use LSC funds to provide representation to victims of trafficking and their family members without regard to their formal immigration status as set out below:

1. Trafficking victims are persons who are induced by force, fraud, coercion, or by virtue of their minority (under the age of 18) to enter into the commercial sex industry or who are similarly exploited for their labor. The definition of trafficking further covers those who are recruited, harbored, transported, or provided for labor services through force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

2. Eligibility of an adult trafficking victim for LSA representation may be established by:

(a) Obtaining a copy of the client's certification letter from the Department of Health and Human Services (HHS) Office of Refugee Resettlement or noting in the case file that the documentation was reviewed. **(Under <u>no</u> circumstances should LSA staff ever retain the client's original certification letter for copying and return to the client at a later time.)**
(b) In the absence of reviewing the client's certification letter, verification can be obtained by calling the HHS trafficking verification line at (202) 401-5510 or (866) 401-5510) and noting the fact in the case file
(c) If a trafficking victim has not yet applied for certification, LSA should document in the case file its determination that the client should qualify for certification and may proceed to represent the client in applying for a T-visa from the Department of Homeland Security (DHS) and a certification letter from HHS or by working with federal law enforcement to obtain a grant of continued presence from DHS and a letter of certification from HHS.

3. Eligibility of a minor (under the age of 18) trafficking victim for LSA representation:

(a) Since minors under the age of 18 do not need to be certified (although they may obtain an eligibility letter from HHS in order to receive governmental benefits), LSA should document in the case file its determination that the client meets the definition of a child victim of trafficking.
(b) If the child has obtained an eligibility letter from HHS, a copy should be included in the file or a notation made in the file that the letter has been reviewed.

4. Eligibility for LSA representation of eligible family members of trafficking victims:

(a) For a victim under the age of 21, the spouse, children, unmarried siblings under the age of 18, and parents are eligible family members.
(b) For a victim who is 21 years of age or older, only the spouse and children are eligible family members.
(c) LSA should make a copy for the case file of the relative's derivative T-visa. (I-94 coded T-2. T-3, T-4, or T-5, Form I-797 Notice of Action indicating approval of T-2. T-3, T-4, or T-5 status, employment authorization coded (c)(25)), or other document indicating the issuance of T nonimmigrant status. If a copy cannot be made, the case file should contain a notation that this documentation was reviewed
(d) If relative has not yet applied for derivative T-visa, LSA should document in the case file its determination that the client should qualify for a derivative T-visa and may proceed to represent the client in applying for a derivative T-visa.

5. Legal services available to trafficking clients and their eligible family members:

(a) LSA may provide legal representation in applying for a T-visa, certification letter, grant of continued presence, letter of eligibility, or derivative T-visa as the circumstance require and are appropriate.
(b) Within the scope of its established priorities, LSA may provide civil legal representation with legal issues that are either related to or unrelated to trafficking.
(c) In cases involving adult trafficking victims and the family members of trafficking victims, LSA must attempt to discontinue representation in accordance with the rules of professional conduct if the client is denied a T-visa, a certification letter, a grant of continued presence, or a derivative T-visa unless the client is otherwise eligible for representation at that time.

6. Any advocate seeking to represent a client pursuant to the provisions of VAWA 2005 must obtain written approval from the Domestic Violence Advocacy Director or the Director of Advocacy. Use the form Representation of Not Fully-Documented Clients Pursuant to the Trafficking Victims Protection Reauthorization Act of 2003.

1102. Financial Standards

a. Each year the Legal Services Corporation establishes the maximum income levels for individuals eligible for legal assistance. The maximum levels are 125% of the Federal Poverty Guidelines issued annually by the Department of Health and Human Services. LSA has adopted 125%-of-poverty as its maximum income eligibility level.

b. Financial eligibility will be determined pursuant to the income guidelines most recently promulgated by LSC. The Director for Advocacy will ensure that each Supervising Attorney, Regional Director and Advocacy Director is provided with a copy of the most recent income eligibility guidelines showing 125% of the Federal Poverty Guidelines and 200% Federal Poverty Guidelines.

c. Definitions

1. "Governmental program for the poor" means any federal, state or local program that provides benefits of any kind to persons whose eligibility is determined on the basis of financial need. This includes, but is not limited to, food stamps, Family Assistance and Supplemental Security Income ("SSI.")

2. "Income" means actual current annual total cash receipts before taxes of all persons who are resident members of, and contribute to the support of, a family unit.

3. For purposes of eligibility determination, a "family unit" is a group of people related by blood or marriage and living together, examples of which include, but are not limited to, the following:

(a) A married couple living together and their children and stepchildren who live with them and any other family members who regularly live with them and share income and expenses.

(b) A person (and that person's children) who is living in a the same house or apartment as other family members on a temporary basis because of domestic violence, eviction or some other event beyond that person's control may be considered a separate family unit.

(c) Where one or more people members of a family living in the same home establish themselves as a separate food stamp household, LSA may consider them as a separate family unit and consider only the food stamp household's income when determining whether that separate family unit is eligible for LSA representation.

(d) Similarly, when one or more people members of a family living in the same home establish themselves as a separate Family Assistance household, LSA may consider them as a separate family unit and consider only the

Family Assistance household's income when determining whether that separate family unit is eligible for LSA representation.

(e) A battered person (and her children) seeking relief against her spouse or cohabitant, even if the spouse or cohabitant resides in the same dwelling.

(f) A person (and her children) living with someone to whom she is not related by blood or marriage may be treated as a separate family unit from the unrelated person, unless the unrelated person is a parent of one or more of the person's children, and those common children live with them.

4. "Total cash receipts" include money wages and salaries before any deduction, but do not include food or rent in lieu of wages. They include income from self-employment after deductions for business or farm expenses; regular payments from public assistance; Social Security; unemployment and worker's compensation; strike benefits from union funds; veterans benefits; training stipends; alimony, child support and military family allotments or other regular support from an absent family member or someone not living in the household; public or private employee pensions and regular insurance or annuity payments; and income from any income-producing property, dividends, interest, rents, royalties or from estates and trusts. They do not include the value of food stamps or any other non-cash benefits; utility allowance checks from a Housing Authority; Low Income Home Energy Assistance Program (LIHEAP) funds; EITC payments or tax refunds; gifts; money withdrawn from a bank; or compensation and/or one-time insurance payments for injuries sustained.

e. The LSC financial eligibility guidelines apply to all clients for whom we use LSC funds to provide service and all clients for whom we use other funds that incorporate LSC eligibility guidelines.

1. HUD counseling grants not only allow us to provide representation (outside of court) to people whose income exceeds LSA limits, they require it.

2. Certain other grants also permit representation of people whose income exceeds LSA limits. All Supervising Attorneys need be aware of the income limitations associated with all the grants that can be used in their offices.

1103. Other Considerations Relating to Client's Financial Ability to Obtain a Private Lawyer

Applicants with income below the gross income limits may be denied service based upon consideration of the factors listed below. When making an eligibility determination based on these factors, it is necessary also to consider the factors listed in section 1104.

a. Current income prospects, taking into account seasonal variations in income;

b. The availability of private legal representation at a low cost with respect to the particular matter in which assistance is sought;

c. The consequences for the applicant if legal assistance is denied;

d. The existence of assets that are available to the applicant and are in excess of the asset limits described below;

e. Other significant factors related to financial inability to afford legal assistance, which may include evidence of a prior administrative or judicial determination that the person's present lack of income results from refusal or unwillingness, without good cause, to seek or accept suitable employment.

1104. Over Income-Authorized Exceptions

A person or family whose gross income exceeds the 125% of the federal poverty guidelines but does not exceed 200% of the federal poverty guidelines may be provided legal assistance if one or more of the situations listed below applies. Note that this consideration does not involve subtracting any expense from income, but rather considering factors that could prevent an applicant from obtaining private legal assistance.

The case file must clearly indicate the client's gross income and that the client is being found eligible as a result of an authorized exception (reason accepted code 2.) The circumstances supporting any decision to represent such a person or family must be documented and included in the client's file. Each month, each Supervising Attorney must provide notice to the Executive Assistant at the Central Office of the number of clients served on the basis of an authorized exception and the factual bases for serving them, so that this information can be provided to the LSC upon request. Before determining someone eligible because of any of an authorized exception, the person determining eligibility must also examine the factors listed in section 1103 to see if they would militate against finding the applicant eligible.

a. The applicant's current income prospects, considering seasonal variations in income.

b. The applicant's medical expenses, including the cost of health insurance premiums.

c. Fixed debts and obligations. Examples include but are not limited to child support, alimony, mortgage payments, rent, casualty losses and unpaid federal, state, or local taxes from prior years.

d. The applicant is seeking legal assistance to secure benefits provided by a governmental program for the poor.

e. Expenses for dependent care, transportation, clothing and equipment expenses necessary for employment, job training or educational activities in preparation for employment.

f. Non-medical expenses associated with age or physical infirmity of the applicant or resident family members.

g. Current taxes.

h. Other significant factors that the recipient has determined affect the applicant's ability to afford private counsel.

1105. Income Above 200% Federal Poverty Guidelines

If a client's income exceeds 200% of the Federal Poverty Guidelines, LSA cannot use LSC funds to represent the client, unless the client has very high medical expenses or nursing home expenses; the medical or nursing home expenses are documented in client's file; and the Executive Director grants written approval, which must then be maintained in the client file.

1106. Asset Ceilings

1106. Asset Ceilings (required by 45 CFR 1611.6)

In light of the vast demand for its services, LSA has to limit its representation to those who lack sufficient cash or other assets to hire a private attorney. For that reason, an otherwise eligible applicant is ineligible for LSA if the applicant has available to him or her non-exempt assets with a total equity value greater than $5,000.00. Any cash or other countable available assets in excess of that amount would render the applicant ineligible for LSA's services.

a. Except as excluded in 1106c, LSA will consider all liquid and non-liquid assets of all resident members of a family unit or household that are readily convertible to cash to the extent that such assets are actually available to the applicant.

1. The value of a liquid asset is its cash value less any outstanding indebtedness secured by an interest in the asset and less any other expenses of converting the asset into cash, including applicable taxes and necessary attorney fees.

2. An applicant’s non-liquid asset is valued according to the amount of money it can generate for the applicant to use to pay for legal representation. If equity in all an applicant’s non-liquid assets, considered with the overall income and financial

position of the applicant, is sufficient for a commercial bank to issue a loan secured by the equity, then the amount of the maximum possible loan proceeds after deduction of interest and other loan costs is considered as if it were a liquid asset of the applicant.

b. Examples of countable liquid assets are cash, bank accounts, certificates of deposit, stocks and bonds. An example of a countable non-liquid asset subject to the valuation set forth in section 1106a2 is any fee simple interest in land that the applicant neither rents out to produce income nor uses as a primary residence.

c. The following resources are exempt:

1. The applicant's home and surrounding land;
2. All household goods and personal effects of the applicant's household;
3. Any property that must be liquidated to defray an existing debt or obligation;
4. Any property that produces income upon which the applicant depends in whole or part for his/her livelihood so long as the applicant is making a good faith effort to have the property produce income consistent with the property's fair market value;
5. Any property that is directly related to the special need of an elderly, institutionalized, or handicapped applicant;
6. One car or truck – treat as exempt the household's vehicle with the highest equity value;
7. Any IRA, TDA, stock bonus, pension, profit-sharing, annuity, or similar plan or contract for which the right to receive payment is on account of illness, disability, death, age, or length of service;
8. Any resources belonging to a household member or members who receive Family Assistance, SSI or food stamps;
9. Trusts designated for education and medical expenses;
10. Cash value of life insurance;
11. Burial plots;
12. Assets that a domestic violence victim holds jointly with her abuser.

d. The Executive Director may waive the assets ceiling in unusual or exceptional situations. Any such waiver must be documented in the client's file. Any such waiver must be documented in the client's file with a statement of the reason for the waiver.

1107. Emergency Legal Services

a. In emergency situations where it is necessary to protect the legal rights of an individual, LSA may make a special appearance for an eligible client in a case or matter not within LSA priorities. Accordingly, such emergency representation of an eligible client is allowable, with prior written approval obtained in accordance, under the following conditions:

1. The client is unable to negotiate the legal process due to disability, language or cultural barrier, and significant legal rights or interests would be lost in the absence of immediate representation; or
2. The client's health or safety is at imminent risk and would be endangered absent immediate representation; or
3. The statute of limitations or a time limit imposed on procedural requirements is about to run and failure to secure immediate legal assistance would result in loss of his/her legal rights; or
4. Failure to represent would place staff at risk of violating the Alabama Code of Professional Responsibility; or
5. For any other reason that would reasonably be considered a bona fide emergency in light of all the circumstances presented, including a case or matter requiring immediate legal action, circumstances involving the necessities of life, a significant risk to the health or safety of the client or immediate family members or issues that arise because of new and unforeseen circumstances, such as natural disasters, or unanticipated changes in the law affecting large numbers of clients.

b. Authorization to undertake cases or matters in emergency situations will be obtained in writing from the Executive Director or the Director for Advocacy, and a copy of the authorization must be retained in the client's file. In determining whether to authorize emergency representation, the Executive Director or Director for Advocacy should consider:

1. the time period in which action must be taken to protect the client's interest;
2. the severity of the consequences to the client if no action is taken;
3. the likelihood of success if urgent legal action is taken;
4. the capacity of another source of free or low-cost legal assistance to undertake the particular case;
5. the effect the problem presented by the emergency case or matter will have on the client community; and
6. the consequences of diverting resources from existing priority cases or matters.

c. Each month, the Supervising Attorney of each office must send to the Central Office a report providing the number of persons whom the office has represented in a non-priority case.

1108. Eligibility Verification

If there is substantial reason to doubt the accuracy of eligibility information furnished by the applicant, an appropriate inquiry will be made to verify the information. The written consent of the applicant must be obtained for any such inquiry. There will be no determination of eligibility until the appropriate inquiry has been made.

1109. Change in Circumstance

If a change in an applicant's financial circumstances during representation by LSA renders her/him ineligible for services, representation will be discontinued if it can be accomplished without substantial prejudice to the rights of the client. In all such cases of discontinued services, LSA will assist the client in obtaining private counsel.

1110. Group Representation

a. LSA may use LSC or other funds to represent a group, corporation, association or other entity if the entity satisfies two criteria:

1. The entity lacks, and has no practical means of obtaining, funds to obtain private counsel; and

2. One of the following is true:

(a) The entity is primarily composed of people eligible for legal assistance from LSA; or

(b) The entity has as a principal activity the delivery of services to those people in the community who would be financially eligible for LSA, and the legal representation relates to that principal activity.

b. LSA has to document the eligibility of any group or other entity.

1. The entity must provide information showing that in light of the entity's income, income prospects, assets and obligations, the entity lacks, and has no practicable means of obtaining, the funds to obtain private counsel; and

2. In order to determine whether the people making up the group and/or the people benefiting from the activity of the group would be financially eligible for LSA, LSA must consider the financial and other socioeconomic characteristics of the group, particularly when the group is so large that screening a majority of the membership or community served would be impracticable. These financial and socioeconomic characteristics must be consistent with those of people financially eligible for LSC-funded legal assistance.

c. Even if a group meets the financial eligibility criteria, LSA can provide legal assistance only if it is otherwise permissible under applicable law and regulations.

d. For guidance, LSC provided four examples of groups that might present for representation and discussed whether the groups would likely be eligible. By reading through the examples, an advocate can understand how to make the kinds of determinations necessary for ascertaining whether LSA can represent a group on the legal problem with which it comes for assistance.

1. The first example is a public housing tenant association that is seeking to compel a housing authority to provide required maintenance services to the buildings and grounds. Instead of determining the financial eligibility of all members of the tenant association through regular screening, LSA would be permitted to draw a conclusion based on the financial and socioeconomic characteristics of public housing tenants. LSA would still need to gather sufficient information to determine the association

lacked the ability to obtain private counsel. It would also have to have some information to support its conclusion that either the association's members were eligible or most tenants benefiting from the maintenance services were eligible.

2. The second example is a group of five women on public assistance who get together to form a daycare center. They obtain a grant from the welfare department that can be used for legal assistance in getting the needed permitting and lease rights and a line of credit from the Small Business Administration to create and operate the business. Even if the women were all eligible due to their limited public assistance income, LSA could represent the group only if it determined that the grant and line of credit were insufficient to enable the group to pay for legal representation. LSC implies this would not usually be the case.

3. The third example is a community group running a food bank that wants legal representation to renegotiate its lease to remain in its warehouse space long-term. The group is a 501(c)(3) corporation with a volunteer board of directors who are not personally eligible for LSC-funded legal assistance. In determining the group's eligibility, LSA would have to consider the donations to and expenses of the group and would have to decide whether the food bank was a principal activity of the group. If the warehouse space was for the food bank, the required link between activity and assistance sought would be met. It should not be hard to show that the financial and socioeconomic characteristics of those using a food bank would be consistent with LSA financial eligibility.

4. The fourth example is a nonprofit group running a homeless shelter. The group's board is not financially eligible. Someone who came to the shelter uninvited to distribute a take-out menu for a local restaurant is suing the group, because he slipped and fell on ice on the shelter's stairs. The shelter's beneficiaries surely have characteristics consistent with LSA financial eligibility. However, LSC explains that even if the group's income, resources and prospects compared to its expenses showed a lack of means to retain private counsel, LSA would probably not be able to represent the shelter, because the claim is unlikely to be sufficiently related to the primary activity of the shelter.

1111. Criminal Representation

LSA will not represent an applicant or a client in any case which could lead to a conviction, including those cases (such as traffic offenses) in which the only penalty is a fine. This prohibition also includes collateral challenges criminal convictions, such as coram nobis, habeas corpus and, where applicable, mandamus and prohibition.

1112. Services That Would Relieve a Governmental Entity of Its Legal Responsibility to Provide Counsel.

No representation may be undertaken in any civil or quasi-criminal action, including juvenile proceedings, where such would relieve a governmental entity of its legal responsibility to provide counsel. Where an applicant is entitled to appointed counsel, LSA will not represent that applicant.

1113. Fee-Generating Cases

a. Fee-generating cases of otherwise eligible clients will be referred to the private bar in accordance with the procedure described in section 1210 of this manual.

b. A fee-generating case is any case or matter that, if undertaken by a private lawyer, would be reasonably expected to result in a fee for legal services from an award to a client, from public funds, or from the opposing party. For the most part, these are cases that generate an attorney's fee pursuant to a retainer agreement between counsel and a client for a percentage of damages or pursuant to a statutory provision for attorney's fees. Cases deemed fee-generating include:

1. Plaintiffs' personal injury and property damage claims in excess of $5000;
2. Plaintiffs' contract claims for damages in excess of $5000;
3. Wage claims in excess of $5000;
4. Probate of wills or administration of estates involving substantial estates;
5. Guardianships involving substantial estates;
6. Plaintiffs' actions for the sale of real property;
7. Claims to recover or establish a right to non-homestead real property if the value of the property is substantial;
8. Use or retirement insurance claims for damages in excess of $5000;
9. Divorce or contempt actions on behalf of an eligible person whose spouse has income in excess of $100,000 per year and/or assets (other than the marital home) in excess of $50,000;
10. Claims for damages or other relief under federal statutes for which attorney's fees are authorized; and
11. Social Security and SSI claims.

c. Some have identified chapter 13 bankruptcies as fee-generating, because a debtor’s lawyer is normally paid out of the debtor’s monthly payments. While this may be a cogent reason for asking a client to seek private representation, it does not fall within the definition

of a fee-generating case in that the fees do not come from "an award to a client, from public funds, or from the opposing party**."**

d. Exceptions. Even if a case would otherwise have to be considered fee-generating, it is not fee-generating if either:

1. A court appoints an attorney of LSA pursuant to a statute or a court rule or practice of equal applicability to all practicing attorneys in the jurisdiction; or

2. LSA undertakes representation under a contract with a government agency or other entity.

e. Cases deemed fee-generating may nevertheless be undertaken on behalf of an otherwise eligible client under the following limited circumstances:

1. The case has been referred and rejected by the local lawyer referral service or by at least two private attorneys; or

2. Neither the referral service nor at least two private lawyers will consider the case without payment of a consultation fee; or

3. The client is seeking only SSI or social security benefits.

4. The Executive Director or her designee has determined that referral of the case to the private bar is not possible because:

(a) Documented attempts to refer similar cases in the past generally have been futile;

(b) Emergency circumstances compel immediate action before referral can be made, but the client is advised that, if appropriate, and consistent with professional responsibility, referral will be attempted at a later time; or

(c) Recovery of damages is not the principal object of the client's case and substantial statutory attorneys' fees are not likely to be available.

f. For each fee-generating case where an LSA advocate represents a client, the advocate will prepare a Fee Generating Form and give it to the Supervising Attorney, who will send copies of all these forms to the Central Office by the fifth day after the end of each month.

g. No person employed by LSA will accept compensation in any form from any source whatsoever for referring any person to any source of legal assistance, whether during hours of employment or at any other time.

1114. Association of Private Counsel

a. An attorney employed by LSA may associate or be associated by private counsel in representing an eligible client only with the express written approval of the Supervising Attorney and either the Director for Advocacy or the Executive Director. Association with or association by private counsel is permitted under the following circumstances and conditions only:

1. Private counsel has special expertise that is necessary for effective representation of the client or other reasons exist that justify the association; and

2. A written agreement is entered into between LSA and private counsel, approved in advance by the Supervising Attorney, the Regional Director and the Executive Director or her designee, which provides:

(a) for the manner in which litigation costs and expenses will be paid and reimbursed; and
(b) for applications for attorney's fees by private counsel based only on hours expended by the private lawyer; and
(c) for a retainer agreement to be entered into between LSA and private counsel; and
(d) for designation of lead counsel.

b. As an alternative to association to co-counsel with a private lawyer, LSA may enter into a written agreement with a private lawyer to provide specific services, provided that the agreement is approved in advance by the Supervising Attorney, the Regional Director and the Director for Advocacy, and that it sets out the specific services to be provided by private counsel, the time to be devoted thereto, and the terms of compensation (which will be based on the prevailing rate for like services).

c. Association of LSA Board Members. LSA attorney board members or their firms may associate or be associated by an attorney employed by LSA in the same manner as prescribed generally for the association of private counsel. When an attorney board member and an attorney employed by LSA associate in a case, the LSA attorney will write a memorandum to the file with a copy of the president of the Board of Directors giving a detailed explanation as to why the association of the board member was required.

1115. Attorney's Fees and Litigation Costs

a. In no case will LSA claim or accept any attorney's fee.

b. LSA will claim and accept all adjudicated awards of litigation costs.

c. Reimbursement for Litigation Costs and Expenses.

1. When LSA advances any litigation cost for a client, the client is obligated to reimburse LSA for the cost.

2. Any such reimbursement will inure to the benefit of LSA. Upon receipt, the case handler will forward the reimbursement immediately to the Director of Operations and notify the Director for Advocacy for credit to the litigation account.

1116. Small Claims Courts

Individuals may represent themselves in small claims courts when the amount of the claim does not exceed $3000. Accordingly, where a client has the necessary capacity, and the client's claim is within the jurisdictional amount for small claims court, the client should be referred either there or to a private attorney.

1. If the amount is in excess of the small claims limit but less than $5000, LSA should evaluate whether to represent the client or to refer the client to a private lawyer or to advise the client how to represent himself/herself.

2. Claims over $5000 must be handled as fee-generating cases.

SUBPART 1200 ELIGIBILITY DETERMINATIONS AND REPRESENTATION

1201. Client Intake

a. Intake is the process by which an LSA employee gets information from an applicant to determine whether that applicant is eligible for our services and to identify the problem for which the applicant seeks help and other legal needs the applicant may have.

b. Intake is the primary means by which people who call needing legal advice or representation gain access to LSA advocates and the various pro bono and reduced fee lawyer programs offered by the private bar. Whenever there is an available volunteer lawyer who can assist someone with a legal problem either through a VLP or through another organization, we need to conduct an intake.

c. The client intake process ascertains and documents an applicant's eligibility or ineligibility for service. For all eligible applicants, it also determines the nature of the applicant's legal problem, obtains all relevant information and documents relating to the legal problem, begins to build a relationship of trust and confidence with the applicant and secures all signatures required on compliance documents.

d. The Supervising Attorney and the Regional Director will determine a local office's procedures for conducting intake and follow-up in a matter that ascertains and documents the applicant's eligibility or ineligibility for service and, for all eligible applicants, determines the nature of the applicant's legal problem, obtains all relevant information and documents relating to the legal problem, builds a relationship of trust and confidence with the applicant and secures all signatures required on compliance documents. The Coordinating Attorney and the Director of the Call Center will make the determination for the Call Centers.

1. Where LSA can neither provide representation nor make a referral to a volunteer or reduced fee lawyer, the intake procedures should provide applicants with information about agencies that may be able to assist them. See Tracking and Reporting Matters.

2. When applicants have problems other than legal problems, intake should refer them to appropriate agencies. See Tracking and Reporting Matters.

3. No office will make any changes to its procedures for intake and follow-up without notifying the Director for Advocacy.

4. Neither the Supervising Attorney nor the Regional Director will close down the office's regular intake for more than one day without conducting the analysis and following the procedure set forth in subsection f.

e. In consultation with the Regional Director, a Supervising Attorney will determine the office's procedures for conducting intake and follow-up.

1. This includes establishing a schedule of times when a potential client can access the office for an intake and making the public aware of that schedule by taking various steps, including notifying agencies and organizations that serve our potential clients.

2. The procedures must also assure that applicants with problems other than legal problems are referred to appropriate agencies.

3. Neither the Supervising Attorney nor the Regional Director will make any changes to the office's procedures for intake and follow-up without notifying the Director for Advocacy.

4. Neither the Supervising Attorney nor the Regional Director will close down the office's regular intake for more than one day without conducting the analysis and following the procedure set forth in subsection g.

f. A part of the intake process is determining whether the applicant is a citizen or an eligible non-citizen and, if so, documenting this eligibility. Anyone screening a potential client will determine whether the applicant has been a victim of domestic violence, sexual assault, trafficking or another crime under the Violence Against Women Act ("VAWA") **before** asking any questions relating to immigration status.

1. When conducting a telephone intake, the LSA staff member will ask whether the applicant is a citizen and, if not, an eligible non-citizen, and indicate the answer on the intake form.

2. When conducting an in-person intake in an LSA office or at any other location, the LSA staff member will ask whether the applicant is a citizen

(a) If the applicant is a citizen, the staff member will have the applicant sign the portion of the citizenship form/statement of facts designated for a client to attest to citizenship.

(b) If the applicant is a non-citizen, the staff member should determine whether the applicant is an eligible non-citizen and, if so, document the basis for eligibility and make a copy of a relevant document to put in the file.

g. If some occurrence makes it difficult for an office to provide adequate service to existing clients and to conduct new intakes of clients, the Supervising Attorney should determine whether the situation warrants a temporary closing down of intake or a reduction to serving only those potential clients with immediate needs (emergency intake.)

1. In making this determination, the Supervising Attorney must consider the capacity of the office's advocates to serve existing clients in light of the occurrence (taking into consideration their caseloads and other demands,) the obstacles imposed

by the occurrence, and the feasibility of options other than shutting down or drastically reducing intake. The Supervising Attorney must also formulate a plan to bring the office back to full intake as soon as practicable.

2. If the Supervising Attorney decides that a closing down of intake or a restriction to emergency intake is necessary, s/he will send an email to the Executive Director and the Director for Advocacy, with a copy to the Regional Director, explaining the reasons for this decision and setting out the length of time for which the reduction in service is to be in effect and the Supervising Attorney's plan to restore the capacity to return to full intake. Requests should generally be made for a day or two at a time, with the situation to be reviewed again as the time period draws to an end.

3. The Supervising Attorney will follow up with a phone call to the Director for Advocacy if there is no response to the email within two hours. If unable to reach the Director for Advocacy, the Supervising Attorney will call the Executive Director. If neither can be reached after repeated attempts, the Supervising Attorney, in consultation with the Regional Director, may suspend intake for not more than one day.

4. Since Supervising Attorneys are in the best position to ascertain the capacities of their staffs, the Executive Director and Director for Advocacy will defer to the Supervising Attorney's judgment in the absence of good cause not to do so.

1202. Conflicts of Interests

a. Whenever an applicant seeks representation in a matter in which LSA is already representing a party, any person noting or suspecting such a potential conflict will report it to the Supervising Attorney.

1. If the conflict is discovered before the adverse party has divulged information to LSA, the Supervising Attorney or his or her designee will explain to the adverse party that LSA cannot provide representation because of a conflict.

(a) LSA will then normally attempt to refer the later client to the private bar or a volunteer lawyer program.

(b) Advocates and Administrative Assistants will report the application to the Supervising Attorney.

2. If the conflict is discovered after the adverse party has divulged information to LSA, the Supervising Attorney or his or her designee will explain to the adverse party that LSA cannot provide representation because of a conflict and will explain to the party we were representing why we need to seek to withdraw from representation.

(a) Where withdrawal is necessary, LSA will attempt to refer the client we had been representing through a volunteer or reduced-fee lawyer program.

(b) LSA will attempt to refer the applicant to whom we spoke after the existing client to the private bar or a volunteer lawyer program.

(c) Advocates and Administrative Assistants will report the application for service and the receipt of confidential information to the Supervising Attorney.

b. An LSA office will check its adverse party information to detect such conflicts. Whenever a Supervising Attorney has reason to believe that another party may have already contacted or may in the future contact another LSA office, the Supervising Attorney will call the Supervising Attorney of that other office to advise about the potential for conflict. This situation is most likely to arise when a client and the client's spouse live in areas primarily served by different LSA offices.

1203. Case Acceptance for Full or Limited Representation and Case Rejection

a. In determining whether to accept or reject a case for a financially eligible applicant without a conflict of interest who goes through intake at a local office, a Supervising Attorney or his or her designee will determine whether the representation is prohibited, whether the case is within priorities, and whether the case is so lacking in merit as to make even the delivery of counsel and advice inappropriate. A Call Center Coordinating Attorney will make the same determination for an applicant who calls the hot line.

b. In determining whether to provide representation beyond counsel and advice or brief service, the Supervising Attorney or his designee will determine whether the case is a core case and whether in light of staff levels and staff caseloads the case has sufficient merit.

(1) Before referring a case to a local office, a Call Center Coordinating Attorney must determine whether the case is core, and whether the case has sufficient merit for undertaking extended representation. The Coordinating Attorney will not refer a case without making such determination except in an instance where a client has papers that can more efficiently be examined by a lawyer at a local LSA office.

(a) If the Coordinating Attorney is unsure, he or she must consult with either the Call Center Director or an Advocacy Director or both.

(b) When the Coordinating Attorney has decided the case is appropriate for extended representation, the Coordinating Attorney should refer the case by sending an email to the Supervising Attorney (with a copy to the Regional Director) setting out the relevant facts and the reason why extended representation appears appropriate. If the Coordinating Attorney has gotten the opinion of an Advocacy Director, the email will reflect that.

(c) Whenever the client has any type of pressing deadline, the Coordinating Attorney will attempt to call the Supervising Attorney, and if unsuccessful, another staff member at the local office and advise of the referral and the need for prompt action. Should attempts to reach the Supervising Attorney and the office by telephone fail, the Coordinating Attorney will call the appropriate Regional Director for guidance. In any event, the Coordinating Attorney will email the case to the Supervising Attorney and Regional Director.

(2) When the Call Center has referred a case to a local office, the Supervising Attorney will start with the presumption that the case has sufficient merit, and that the client should receive extended representation.

(3) If the Supervising Attorney agrees that extended representation appears appropriate, he or she will arrange for an interview of the client.

(4) If the client appears at the interview, and the Supervising Attorney continues to believe that extended representation is appropriate, the Supervising Attorney will email the Coordinating Attorney to advise that the local office is opening a case for extended representation.

(5) If the Supervising Attorney does not agree that extended representation is appropriate in light of the facts of the client's case, then the Supervising Attorney will consult with his or her Regional Director and can also consult with an Advocacy Director and/or the Director of the Call Center.

(6) If after consultations, the Supervising Attorney and the Call Center still do not agree on whether the local office should provide extended representation, the Supervising Attorney should present the issue to the Director for Advocacy. The decision of the Director for Advocacy will be final.

c. Each office will develop guidelines and procedures to aid in the above determinations and submit them for approval by the Executive Director or her designee. These guidelines and procedures will be in writing and will insure that decisions are made in a timely manner and on the basis of priorities, resources, prohibitions, caseload control and the merit of the case, following a meaningful review of each case.

d. When a case is rejected, the attorney or paralegal will explain the reason for such action to the applicant and make any appropriate referrals.

e. When a case is accepted but the client does not receive full service, the attorney or paralegal will provide the client with legal advice and will explain why the office is not providing full representation.

1204. What Constitutes a Case?

a. The 2001 edition of the LSC CSR Handbook definition of "case" reads:

> **For CSR purposes, a <u>case</u> is defined as the provision of permissible legal assistance to an eligible client with a legal problem, or set of closely related legal problems, accepted for assistance supported by LSC or non-LSC funds in accordance with the requirements of the LSC Act, regulations, and other applicable law. Sections VI and VII of this Handbook contain further guidance on when to treat legal assistance to an eligible client as a case.**
>
> **Legal services programs may record and report the provision of legal assistance as a <u>case</u> only if:**
>
> **(a) the client is financially and otherwise *eligible* to receive assistance under the LSC Act, regulations, and other applicable law;**
>
> **(b) the client's case is within *program priorities* (or is an emergency case accepted under the program's emergency case acceptance procedures);**
>
> **(c) the legal services program has actually *accepted* the client for service through its intake system or another established procedure for ensuring client eligibility;**
>
> **(d) the type of *legal assistance* provided to the client is not prohibited by the LSC Act, regulations, or other applicable law (e.g., a class action); and**
>
> **(e) the *legal problem(s)* of the client are not of a type prohibited by the LSC Act, regulations, or other applicable law (e.g., an abortion case).**

b. Moreover, in addition to satisfying these criteria, the CSR Handbook requires that all legal assistance recorded and reported to LSC as a case must be provided to an eligible **client**, as defined by Section 2.2 of the Handbook, and be **documented** as required by Section V of the Handbook.

Section 2.2 reads:

> **For CSR purposes, a <u>client</u> is defined as a person (or group of persons as defined by 45 CFR Section 1611.5(c)) who is:**
>
> **(a) *eligible* for legal assistance under the LSC Act, regulations, and other applicable law, regardless of source of funding; and**
>
> **(b) *accepted* for assistance through an intake system or other established program procedure for ensuring client eligibility.**

To be eligible for and accepted for legal assistance, a <u>client</u> must meet the financial (including both income and assets), citizenship (including not fully documented person status), and other eligibility requirements of the LSC Act, regulations, and other applicable law.

c. None of the closing codes is appropriate, and no case count can be taken, unless a client actually has a **legal** problem for which we provide some form of **legal** assistance or representation.

d. If we merely tell a client that our office cannot or will not accept her case as it is outside our case acceptance guidelines, we must **reject** the case. If we merely tell a client that our office is closing her case because of her failure to bring in any documents, we must **reject** the case. If we do no more than refer a client to the food bank, Salvation Army, Community Action, Catholic Social Services or another social service agency, we must **reject** the case or code it only as a **matter**. If all we do is give practical advice or personal counseling, we must **reject** the case. Section 7.2 of the LSC CSR Handbook provides that if we refer a case, but fail to give the client legal advice or engage in some brief service, we must reject the case.

e. In order to count a case as a case closed, we must provide **legal** assistance or representation to the client, and we must document in the file that we have done so. Thorough time records that specifically state that we provided some category of legal advice can serve as documentation. However, the file itself should also document that we provided the advice. For many reasons, the best documentation is a copy of a letter that recites the advice – or at least the most significant portion of the advice. In addition to allowing us to count the case, it may be a basis for escaping malpractice liability or for disarming a bar complaint. If the letter does not recite the advice provided, the letter should at least note that we provided advice in a particular area of the law.

f. Every closed case should include a closing memo. The closing memo can and should attest to the nature of the representation provided. This would probably allow a "counsel and advice" case to count as an accepted case even in the absence of any letter, but it is far better to have a letter and to have the advice in the letter.

1205. Core Cases

a. Each Practice Group has identified core cases for its particular substantive area, and LSA has adopted all these cases as core.

b. Whenever a applicant presents to any office with a core case, that office must evaluate the applicant's case and at the very least advise the applicant of his or her rights.

c. An office other than a Call Center is not to represent clients on non-core cases unless:

1. The office has non-LSC funding it receives specifically in order to provide the non-core service; or

2. The office is able to afford clients presenting with core cases with full representation commensurate with the merit of those cases.

d. The list of core cases is as follows:

1. Domestic Relations Core Cases

(a) Domestic violence with immediate threat of harm;
(b) Custody modification with post-divorce ongoing power or control issues
(c) Domestic violence victim served with court papers
(d) Domestic violence victim where the abuser possesses firearms
(e) Custody disputes arising under the Family Relationship Protection Act where there is domestic violence
(f) Need for a PFA (Protection From Abuse) order because of recent abuse
(g) Domestic violence divorce with other issues
(h) To the extent resources are available, other meritorious cases

2. Housing Core Cases

(a) Evictions from subsidized housing
(b) Evictions from private housing
(c) Subsidized housing cases other than evictions
(d) Substandard housing cases
(e) Subsidized housing foreclosures
(f) Private foreclosures
(g) Rent-to-own evictions
(h) Private evictions
(i) Private foreclosures
(j) Other meritorious cases to the extent that resources are available

3. Consumer Cases

(a) Garnishments – including both wage garnishments and bank account

garnishments
(b) Executions – on real and/or personal property;
(c) Repossessions
(d) Title pawn and deferred presentment (payday loan) instruments;
(e) Utility termination (electricity, gas and water)
(f) Collection suits - after screening for effect on client
(g) Tort suits - after screening
(h) Bankruptcy (Chapter 7 and Chapter 13) - mainly as a way of solving problems with garnishments, multiple suits and threatened loss of housing – particularly loss of public housing, loss of homeowner housing and for loss of a car needed to get to and from work
(i) Other meritorious cases as resources are available including suits on contracts, suits involving warranties; utility termination (telephones).

4. Public Benefits Cases

(a) Family Assistance cases
(b) Food Stamp cases
(c) Unemployment cases
(d) Social Security and SSI cessation cases where benefits continue
(e) Social Security and SSI overpayment cases where the recipient is faced with a reduction in benefits due to recovery
(f) Medicaid cases
(g) Other meritorious cases as resources are available, including special education cases.

Legal Services Alabama has not yet identified any Community Economic Development cases as core, but it will do so during 2006.

1206. Tracking and Reporting Matters

a. Matters encompass all the legal services LSA provides directly or indirectly to the low income community other than representation of individual clients on cases.

1. As LSC puts it in 45 C.F.R. 1620.2:

A *matter* is an action which contributes to the overall delivery of program services but does not involve direct legal advice to or legal representation of one or more specific clients. Examples of matters include both direct services, such as community education presentations, operating pro se clinics, providing information about the availability of legal assistance, and developing written materials explaining legal rights and responsibilities; and indirect services, such as training, continuing legal education, general supervision of program services, preparing and disseminating desk manuals, volunteer and reduced fee lawyer recruitment, intake when no case is undertaken, and tracking substantive law developments.

2. Matters tracking and reporting mainly focuses on direct services, but also includes such indirect services as training various individuals and groups of people on how to help low income people. Continuing legal education (MF), supervision of program services (MG), PAI, VLP and other volunteer and reduced fee lawyers (MI), case review (MN) are all indirect services that do not fall within the purview of matters reporting.

b. Types of reportable matters to track:

1. Community legal education, which is categorized in six different ways:
   (a) presentations to community groups on legal subjects
   (b) legal education brochures
   (c) legal education materials on web sites
   (d) newsletter articles addressing legal education topics
   (e) video legal education materials
   (f) others
   Note: Whenever LSA mails CLE materials on a problem different from the problem on which a client has received counsel & advice or brief service, the CLE can and should be counted as a matter.

2. Pro se assistance, which excludes cases closed on counsel and advice or brief service helping a client with pro se documents, but includes:
   (a) workshops or clinics providing generalized legal information
   (b) help desks at courthouses providing generalized legal information
   (c) hard copies of self-help printed materials (such as divorce kits and forms with instructions)
   (d) self-help materials posted on web sites
   (e) self-help materials posted on kiosks

Note that an activity such as distribution of handbooks that provide both basic legal information and self-help guidance could count under either community legal education or pro se, but should be counted under the category that best describes the particular service given.

3. Each person in each office that takes calls from potential clients will keep a list of other legal and non-legal services available to which callers can be referred. Referrals to other agencies for help with a problem when LSA provides neither any legal advice nor brief service on the problem are classified as one of four types:

(a) referrals to other providers of civil legal services to low income people;
(b) referrals to the private bar other than referrals to volunteer lawyers or reduced fee programs;
(c) referrals to providers of human or social services (such as the food stamp office or a food bank);
(d) referrals to other sources of assistance (such as to a Congressman's staff);
(e) Whenever LSA refers a client to an agency on a problem different from the problem on which a client has received counsel & advice or brief service, the referral can and should be counted as a matter.

(1) Whenever a referral on a problem different from the problem on which a client has received counsel & advice or brief service, the referral can and should be counted as a matter. It is not necessary to check your matters against your CSR cases to ferret out any instances where the problem code for the referral is the same as that for the counsel and advice code.

(2) Where there is a referral to more than one source, if they are given out on one call to one individual, it still counts for only one referral. Pick the coding for the one deemed most significant. If however, the person should call another time and another referral is given at that time, it would count as a second referral.

(3) There is no need to record the name or other information about a caller in order for a referral of that caller to count as a matter.

(4) If an eligible client receives advice and also gets a referral in the same problem code, count this as a case closed as a C. It should not be reported as a matter, because that case closing code includes the referral. However, if you represent a client on an eviction for nonpayment of rent and then refer the client to a housing agency for financial assistance, then you could count both the case and the matter.

(5) Count all referrals to non-legal sources of assistance as “Other Problems (Non-Legal).”

(6) Count referrals to the IV-D Child Support Enforcement office as "Referred to other provider of civil legal services to low income people," even though the office serves people of all income levels.

(7) Referrals to the District Attorney's office or the Public Defender's office for criminal matters should be classified as “Referred to other source of assistance, none of the above.”

(8) If an advocacy agency to which a caller is referred assists people with filing public benefits appeals or represents them at administrative hearings, such as Food Stamp fair hearings, classify the matter as “Referred to other provider of civil legal assistance” – even if the agency has no lawyers.

(9) Referrals to the clerks of various courts should be coded as “Referred to other provider of legal assistance.”

(10) Referrals to the Equal Employment Opportunity Commission would fall into the "Referred to other provider of civil legal services to low income people", since they have lawyers who would represent the caller if EEOC believes the complaint has merit.

(11) Referrals to other regulatory/enforcement agencies, such as the Worker's Compensation Board, the Human Rights Commission, the state Department of Labor, the Wage and Hour Board, the Insurance Policyholders Complaint Division, and the Consumer Affairs Division should be coded as “Referred to other source of legal assistance.”

4. Outreach efforts to increase awareness of LSA and the services we provide:
   (a) informational notices in printed media
   (b) TV spots or public service announcements (PSA's)
   (c) radio spots or public service announcements (PSA's)
   (d) newsletters that are not internal to LSA
   (e) referral agreements with other agencies
   (f) "How to Reach Us" pages on web sites

5. Indirect services to help lay service providers address legal problems of the low income community:
   (a) one-on-one legal education or workshops for lay service providers
      (1) lay service provides include social agency staff, law enforcement officials, educators, Family Guidance Center workers, DV shelter workers and others who interact with the low income community in Alabama
      (2) the education should be designed to equip them with legal information they need to spot potential legal needs

   (b) collaborative service delivery models, including:
      (1) participation in community task forces seeking cost-effective solutions to problems that are widespread in the low income community and that represent a significant percentage of LSA's caseload

(2) working together with other professionals to address interrelated needs in more holistic and effective ways

6. Other matters:

(a) mediations or alternative dispute resolution services to low income community
(b) provision of video-conferencing facilities in DV shelters to give DV victims access to lawyers and judges from a safe environment
(c) contributions of content or expertise to statewide legal service website other than posting legal information or self-help forms
(d) Report as "Other", Direct Services, individual assistance in completing applications for other social and community services
(e) anything else

c. Eligibility of person receiving education, referral or other assistance

1. Matters do not require eligibility checking, although activities reported should be oriented toward and intended to assist eligible clients.

2. If a person referred is definitely ineligible, the referral still counts as a matter.

d. Matters can be reported regardless of funding source.

1. Count matters performed by volunteer or reduced-fee lawyer programs if we are able to collect the matter information. For reporting matters, do not separate volunteer or reduced-fee lawyer programs from staff, but combine them.

2. Count any pamphlets distributed to the general target population in the service area, regardless of the source of funds used to produce them and regardless of whether LSA produced or only distributed them.

e. Tracking and Documentation

1. Document a matter by making a notation that the matter was performed in Legal Files or Kemp's.

2. Use codes such as "MA" and "MC" to record matters in timekeeping that will facilitate preparation of Monthly Matters Reports and include enough information in the "how time spent" entry to identify the matter.

3. For each measurable matter, record:

(a) the date of the event
(b) the type of the event (e.g. community legal education, pro se clinic)
(c) number of participants (indicating whether measured or estimated)
(d) a narrative of two or three sentences describing the event
(e) any especially good results or compelling impact

4. Several offices have developed forms that help them track matters during a month and then include them in Monthly Matters Reports. Sample forms are available on the portal.

f. Counting for Matters

1. Matters reports should be solid counted numbers or reasonable estimates. In cases of doubt, err on the conservative side and report the number as an estimate.

2. Avoid reporting methods that tend to run up numbers by counting more than one matter for the same activity. For example, when presenting at a community legal education session at which you distribute brochures, count either "heads" or "paper", but not both.

3. In calculating the "number of people directly receiving the service," count only the number of people directly receiving the service, not the number of people in the households.

4. Count the information you can reasonably count, estimate what can reasonably be estimated and omit anything that cannot be counted or reasonably estimated.

5. The key difference between a matter that is "measured" and one that is "estimated" is whether or not LSA has direct control over the distribution and can give an accurate count. For example, in determining whether to report brochures as "measured" or "estimated," the principal distinction is the degree of control LSA has in ensuring that the brochure actually got into the hands of an interested citizen.

(a) Count as "measured" brochures that actually got into the citizens' hands. Count less certain conveyances as "estimated." Any matters you have counted should be reported as "measured." Any additional matters you have not counted but have a reasonable basis for estimation should be estimated.

(b) Following are some examples:

(1) Measured:

(A) Brochures distributed by the program in response to enquiries from the public.

(B) Brochures that clients and others pick up at an LSA office.

(C) Brochures handed out at a community legal education meeting.

(2) Estimated:

(A) Brochures dropped off in bulk for distribution at the local Bar Association, Law School Clinics or other community service organizations, in the event no one there counts them and/or returns the extras. (B) Brochures left on tables at community legal education events and not collected afterward or counted.

5. For newsletters, which are publications over which LSA has control of distribution and therefore can produce counts (or reliable estimates) of the numbers

of newsletters distributed, count the number distributed to the low income community.

(a) Newsletters generally contain more than one article providing legal education.
(b) However, regardless of the number of such articles, count only the number of newsletters distributed.

6. For newspapers and other print media over which LSA does not have control of distribution, such as a community newspaper, it is difficult to break circulation data (which is generally available) down into reliable counts or the number of people in our target audience (i.e., low income people or helping agencies that serve low income people) likely to have seen and read the legal education articles. For these sorts of activities, count the number of times that a newspaper article has run.

7. As with newspaper articles, count materials broadcast on TV and radio in the Matters Report. Please count each time a video or radio spot airs as one matter.

8. For the website, LSA does not count "hits", but page or document "views"

h. Reporting Matters

1. Each month, each Supervising Attorney, Advocacy Director and Regional Director completes a Monthly Matters Report covering all of the matters for which we are not opening cases

2. For community legal education, brochures and pro se, enter the measured number for each activity plus any estimated number

3. For community legal education, brochures and pro se, the sum by each type of matter under Section A of the Monthly Matters Report is the same number as the Section B "Subject Matter Categories" total, which is generated by adding the number for each subject matter category of the type of matter

1207. Case Assignment Process

a. Cases accepted for service will be assigned by the Supervising Attorney to one or more attorneys and paralegals. In each case, one attorney or paralegal will be assigned primary responsibility for handling and reporting the case.

b. As a general rule, the primary assignment will be given to the attorney or paralegal conducting the initial intake interview.

c. The Supervising Attorney may reassign cases as necessary.

d. Once an advocate receives a case that has been accepted for any form of extended representation beyond brief service or counsel and advice, the advocate will talk with the client about the client's objectives and reach an agreement about the subject matter for the representation and the scope of representation.

1. The advocate will write enter both subject matter and scope on the retainer form, obtain the client's signature on the retainer form and sign the retainer agreement. The form will then become a permanent part of the file.

2. If during the course of representation, the scope or subject matter should change, the client and the advocate will execute a new retainer agreement reflecting the new scope and/or subject matter and retain this new retainer, as well as the old one, in the file.

1208. Standards for File Maintenance

a. The following purposes are served by file maintenance standards

1. Improving an advocate's ability to organize and manage documents in a case;

2. Reducing the possibility of losing a client's original documents or any papers produced for or received in the course of the case;

3. Enabling another advocate to pick up a file and, either just by looking at the file or by looking at the file and the information in the computerized case record, know what kind of problem the client has, what the client expects to be done, what has been done, and what must be done next;

4. Improving LSA's ability to review files for compliance with the requirements of LSC and other funders;

5. Determining whether the client is receiving the kind of quality advocacy to which LSA is committed; and

6. Helping maintain client confidentiality when files are audited, in that having compliance documents in one place reduces the risk a client's confidentiality will be breached inadvertently during the course of an audit.

b. Standard on when to create additional files for a single client.

1. If an advocate represents a single client in a different forum (other than an appeal from one forum to another), this is a new case, and it must have a new file and case number.

2. When an advocate begins to help a client with a problem involving a different area of the law, the advocate needs to have a new case with a new file and a new case number.

3. New problems need new retainers to insure that the advocate is aware of the client's goal, and that the client understands the limit of our agreement to represent.
    a. This is primarily an issue of good practice.
    b. It is also important that the advocate and the firm can demonstrate to funders and others the full value of our work.

c. Each case file will contain a case form (also called an eligibility work sheet or an intake form) and all compliance documents placed together in one place in the file, including:

1. signed citizenship attestation or documentation of not fully documented person eligibility in all cases except for telephone intakes where citizenship or eligible not fully documented person status is checked on the intake form, service is limited to

advice or brief service, and the client does not sign any other documents for Legal Services Alabama;

2. the standard retainer agreement(s) in any case where a Legal Services Alabama advocate will provide more than advice or brief service, but not in any case where Legal Services Alabama is making a volunteer or reduced-fee lawyer programs referral;

3. completed statement of facts in any case where a Legal Services Alabama advocate will either file in court or engage in prelitigation negotiation on behalf of the client;

4. completed case information disclosure form for any case in which a Legal Services Alabama attorney either files suit in court on behalf of a client or files an appeal on behalf of a client where Legal Services Alabama was not the attorney of record in the lower court case from which the appeal is filed.

5. Any necessary Executive Director's approval of representation, including any waiver of asset standards, acceptance of a client whose household income is above 200% of poverty, approval of group representation, permission to appeal, and any other documents required by LSC regulations or LSA policy.

6. The Supervising Attorney, in consultation with the office's staff will determine whether the one place for all these documents is at the bottom of the right-hand side of file folder or the bottom of the left side. Once this decision has been made, all files in that office will be maintained in that manner. This puts everything together in one place that is easy for anyone in LSA to find. In the absence of any contrary local office policy, all compliance documents should be maintained on the left side of the case file folder.

d. File Organization

1. Each advocate is responsible for filing and securing all correspondence, pleadings, agreements, memoranda, compliance forms and all other documents in the appropriate files, and maintaining the case file in the order and location prescribed by the advocate's office.

2. For files that contain a relatively small number of documents, all relevant papers should be hole-punched and secured in reverse chronological order on the right side of the case file folder. The most recent addition goes on the top. Large reports, transcripts, trial notebooks and the client's original documents should not be hole-punched. Client's original documents should be maintained in an envelope or folder that is secured in the file, thereby minimizing the risk they will be lost. Large reports, transcripts and notebooks should be safely stored with the case file.

3. For files that contain enough documents to make the file an inch or more thick, the advocate must create at least one separate file back or binder that contains all the documents of a particular category secured and maintained in reverse chronological order. (A file back is one page of a file folder, with fasteners at the top. It could be another file folder.) Examples of categories to use are: pleadings, memoranda of law and orders in a court case; medical records in an SSI disability case.

4. Advocates are responsible for insuring that each case contains a record of each contact with a client, the adverse party, the adverse party's lawyer, any witness and any judge or other decision maker. The records may be either in the computerized data base or in memo form in the physical file.

5. In each file, an advocate must document the advice given to the client. Except for good reason set forth in the file, at least the principal advice given to the client and any significant additional advice must be memorialized in a follow-up letter to the client.

6. Whenever closing a case file, an advocate must send a closing letter to the client or document in the file the reason for not sending a letter. Misunderstandings about what an attorney agreed to do are a frequent cause of ethical and malpractice complaints. When such disputes arise, there is no substitute for having a letter in a file terminating representation.

e. Use LSA's codes in the completion of case forms. Attorneys and Paralegals are cautioned to use extreme care in making accurate and precise entries on these forms; they will be processed by computer and will constitute the backbone of LSA's statistical reports for internal and external use.

f. Supervising Attorneys must regularly monitor compliance and assure the accurate entry of information onto case forms. They are ultimately accountable for ensuring their offices properly complete and maintain compliance documents and report on them as required. They are also ultimately accountable for the accuracy of case form and time record information.

1209 Protocol for Timekeeping

a. The accurate and contemporaneous recording of time entries is more than a requirement imposed by LSC. It is essential for documenting all that we do for our clients and the community. Accurate and precise time-keeping is also necessary for effective tracking of everything we are doing; for effective and efficient supervision; for supporting requests for travel reimbursements; and for grant monitoring.

1. Each advocate is responsible for entry of time records for all LSA-related activities and is further responsible for ensuring that his or her time is recorded completely and accurately.

2. Each Supervising Attorney is responsible for ensuring that all the time entries for his or her office are complete and accurate.

3. Each Supervising Attorney is responsible for getting a copy of the database that is complete through the end of the month to the Central Office by the tenth day of the following month.

(a) To be complete the database must contain all time entries for all advocates' activities through the end of the month; and

(b) To be complete the database must also show all the cases opened during that month and all the cases closed as of the end of the month.

b. Choosing the Appropriate Time Entry

The codes are not perfect, and you may experience difficulty determining the best entry to use to record the time spent on an activity. As a general rule, be specific. Where more than one entry seems appropriate, here are some tips to follow:

1. Avoid using "O", "MO" or "SJ", instead selecting the best fit from the available options. If you end up choosing one of these codes, you will need to put an extensive description in the "How Time Spent" section of your time log.

2. If the activity can be coded for an individual client, code it that way. For example, intake (in house or circuit riding) should be entered individually for each client seen for intake. If you review one of your cases at staff meeting and spend 0.1 hr. or more during the review, it is best to enter the time by the client's name and number with the code "S" for reviewed at staff meeting. When circuit riding, the "MJ" entry for intake is to be used only to cover the travel time to and from the intake office and for time that is not spent either seeing intakes or working on other tasks you brought from the main office. Remember to include in the "how time spent" section your destination.

3. If you are working simultaneously and equally for two clients, as in a case where Legal Services Alabama represents both of two defendants, keep track of the total time and then enter half of the time under each of the two clients' case numbers. For example, if you spend .4 hr. on a letter for both clients, enter .2 hr. for one client and .2 hr. for the other.

4. If an activity could reasonably be coded as either a matter or a supporting activity, you generally should enter the time as spent on a matter. For example, if you are reviewing phone messages and incoming mail, most of which relates to your client advocacy, that time is best coded as "MM" for "legal clerical work" rather than "SI" for general clerical work.

5. Staff meeting is one activity (or cluster of activities) that could be coded any of several ways. Keep track of the total amount of time that you spend at the staff meeting and then break that total down according to the time that you spend:

(a) reviewing one of your cases (see number 1 above);
(b) reviewing several of your cases briefly ("ML" for "case review");
(c) discussing any possible volunteer or reduced-fee lawyer programs referral ("MI" for "PAI Work");
(d) reviewing another advocate's cases ("ML", unless one case is discussed so long that you should code the time by that client case number and the code "S"); and
(e) discussing LSC, LSA or office policies ("SE" for "general staff meeting.")

6. When two codes apply for a case-related activity, use the more specific. For example, if time could be coded either as "D" for telephone call or "C" for negotiation, it should be coded as "C."

c. Reciprocity

1. It may appear that the timekeeping codes were selected with supervisors and administrators in mind. However, entries such as "ML" for case review, "MN" for supervising advocacy work, "SG" for staff evaluation and "SH" for general supervision are meant to be entered both for the supervisor and the supervisee, the one whose cases or advocacy work or whatever is being supervised and the one who is doing the supervising.

2. As noted above, however, "ML" is more appropriate for very brief discussions of a number of cases. Otherwise, both the supervisor and the supervisee should enter time for the individual case.

d. Efficiency and Accuracy

1. Each advocate's time entries must accurately reflect the time that the advocate spends on each individual task.

2. Supervisors, administrators and auditors all recognize that for various reasons, it may take vastly different amounts of time to perform one type of activity. For example, some letters can be written in 0.1 hours, while others can take over an hour, especially if they require extensive review of a bulky file and fine tuning of words for the most effective advocacy. Some bankruptcy petitions can be prepared in as little 2.0 hours, while others will require 5.0 or more. The important thing is to do the activity efficiently and proficiently and then record the time accurately.

e. Adequate Description of an Activity

1. The letter codes may give an idea about what you did, but you should **always** put at least **something** in the reason ("how time spent") section.

2. When using "SF" for timekeeping, you should say whether you are recording time entries on paper, editing time entries, or logging time entries (on the computer). If you are not entering the current day's entries, then specify what day's entries you are making.

3. When using "G" for administrative appearance or "H" for court, specify what type of appearance is involved, such as "hearing on motion to dismiss" or "appeals referee hearing". Where a ruling is announced from the bench, it is best to note in the "how time spent" section what that ruling was.

4. When using "M" for travel related to a particular case, you have to specify where you went. Instead of just saying "court" or "trial," include the city.

1210. File Retention Policy

a. In accordance with the language in our retainer agreement, which provides clients with the assurance that we will maintain files for seven years, our Accounting Guide provides that we will not destroy a physical file until the passage of at least seven years. We will maintain the computerized records associated with that file for at least the same period of time.

b. Each December, each LSA should run an advertisement in a newspaper of general circulation stating that all files closed prior to December 31 of the year seven years earlier will be destroyed by a specific date and give clients the opportunity to retrieve their files.

c. If an advocate opens a case file for a client with a legal problem that relates to the legal problem addressed in a closed file that has not already been destroyed, the advocate will remove documents from the closed file and add them to the open file and so note in the closed file.

1211. Referrals

a. All personnel assigned to conduct intake interviews may make referrals to volunteer or reduced-fee lawyer programs or to a lawyer referral system. Only Call Center personnel may make a referral to an LSA office. In accordance with section 1203, when a Call Center Coordinating Attorney refers a case to a local LSA office, the Supervising Attorney will presume that the client should receive extended representation.

b. Lawyer referrals will be made through an existing lawyer referral system or to the Alabama Bar Association, the local County Bar Association or the Alabama Black Lawyers Association, pursuant to referral procedures established in each local office by the Supervising Attorney and the Regional Director and approved by the Executive Director.

1. Lawyer referral procedures will be in writing and will insure ready, effective referral of both financially eligible applicants with fee-generating or other prohibited or excluded cases and financially ineligible applicants.

2. Procedures will afford all attorneys engaged in practice in the county in which the action lies or the applicant resides an equal opportunity to participate in referrals.

3. If lawyer referral of a fee-generating case is unsuccessful, LSA may, at the request of the client, either accept the case or make a direct referral to a private attorney.

c. Referrals to Volunteer Lawyers should be accompanied by a full intake.

1. When a Supervising Attorney or his or her designee decides to refer a client to a volunteer lawyer program, a staff person should have the client complete a volunteer

lawyer form indicating the problem for which the applicant seeks a volunteer lawyer.

2. A lawyer in the office should sign a letter to the client giving some legal advice about the problem and explaining the volunteer lawyer process to the client.

3. The Supervising Attorney of his or her designee should also send a letter to the volunteer lawyer staff person enclosing the signed form, a copy of the intake documents and a brief statement of the facts.

d. Referrals to reduced-fee lawyers should be accompanied by a full intake.

1. When a Supervising Attorney or his or her designee decides to refer a client to a reduced fee program, a lawyer in the office should sign a letter to the client giving some legal advice about the problem and explaining the referral process to the client.

2. The Supervising Attorney of his or her designee should also send a letter to the reduced-fee lawyer enclosing a copy of the intake documents and a brief statement of the facts.

1212. Interoffice Representation

a. The Need for Two-Office Representation

1. When a client lives or works near one office but has to appear in court or at an administrative hearing near another, a tension may arise between the need for efficiency and the need to respect a client's choice and convenience. This tension can generally be resolved by having two Legal Services Alabama offices work together to provide the client with the most effective and efficient representation.

2. One office may be more involved than the other in meeting with the client and mapping out strategy. The other may accompany the client to court after meeting with her only once or a few times. Both will communicate with the client and with each other.

3. Similar considerations may arise when a single legal problem requires litigation on behalf of a client in two different counties.

4. In all instances, both offices must focus on the needs of the client. Each office should do what the particular office can best do for the client. This is an opportunity to provide help a client in the most efficient and effective means possible, not a way for one office to dump a client and his or her problems on another office.

b. Client Choice

1. A client who lives near one office but works near another is in the best position to decide which office is more convenient for him or her. A client sued in a remote county may want to talk with a lawyer from an office in or near that county. Legal Services Alabama is committed to letting clients choose the office they want to call for assistance.

2. Where two offices are both convenient to a client, and one is closer to a forum in which the client will have to appear, an advocate at or shortly after intake should advise the client of the possibility that an advocate from the other office may have to get involved. This information may lead a client to decide to work solely or predominantly with an office other than the one the client called for intake. When the client makes this decision, the intake office should take whatever steps necessary to make sure that any resulting delay does not jeopardize a client's claims or defenses.

c. Efficiency

1. On occasion, a client will call an office far from the forum in which the client's case must be heard. A lawyer from the office that the client chooses might have to drive four or more hours round trip, while a lawyer in another office might be able to walk to the forum. Legal Services Alabama is obligated to efficiently delivering

services to clients. It generally cannot justify the extra time and expense of having someone from the intake office go to the distant forum.

2. At the same time, there is an inefficiency any time that one advocate has been working on a case and needs to educate another advocate about the case – and any time that a client has talked at length with one advocate and has to repeat the same conversations with another.

3. Cooperation and early exchange of information between two offices reduces inefficiency and facilitates effective representation of the client.

d. Procedure

When an advocate in one office realizes a likely need for to work with another office to represent a client, the advocate and his or her Supervising Attorney will take steps to evaluate that need. They will work with the Supervising Attorney of the other office to develop the best plan for the two offices to work together to meet the client's needs. If both offices are in the same region, the Regional Director will assist in this planning process.

1. At Intake

Planning for dual-office representation usually starts at intake. When an advocate conducts an intake and recognizes a possible need for dual-office representation, the advocate will do each of the following:

- Ascertain and document the client's eligibility and check for any conflicts.
- Conduct a thorough interview to get salient facts.
- Provide initial advice.
- Ascertain any answer deadlines and any other time constraints.
- Make copies of all relevant documents, including all court papers.
- Check any computerized court records regarding the status of the case, if applicable and possible.
- Make a preliminary assessment of merit.
- Advise the client about the possible need for two-office representation and how it would work.

2. Post-Intake Review

Shortly after intake, the advocate who interviewed the client will speak with the office's Supervising Attorney. The discussion should include all of the following:

- Determining whether the case falls within the program's core cases and, if not, whether the case is within the program's priorities or, if not, appropriate for emergency representation;
- Considering the possibility of getting venue changed so that the advocate or someone else in the office could represent the client in a local court;

- Determining whether the case presents a meaningful possibility of success on the merits and/or colorable claims, counterclaims or defenses;
- Determining what the advocate in the intake office can do for the client and what can most efficiently and most effectively be done by an advocate from another office.

3. Prompt and Detailed Notice

The Supervising Attorney in the office conducting the intake will attempt to speak with the Supervising Attorney of any other office from which assistance may be needed. The Supervising Attorney from the intake office will then fax, mail or e-mail a memorandum to the Supervising Attorney of that other office. The memorandum will say whether the case is core. It will also set forth the nature of the client's problem, a recitation of the underlying facts of the case, a summary of the applicable law, a statement about the assistance needed, a statement of what the intake office proposes to do for the client and an opinion as to the likelihood of success. This memorandum will be accompanied by copies of all relevant documents submitted by the client and copies of all case file documents.

These notice procedures may be modified in an individual case by joint agreement of the offices. Further, in emergency cases where the Supervising Attorney in one office is unavailable, another attorney may act in that Supervising Attorney's place.

4. Response

If the case is core, the Supervising Attorney receiving the memorandum will generally commit his or her office to provide the necessary assistance. The Supervising Attorney can object if he or she believes that the case lacks merit and/or a meaningful possibility of success.

5. Resolving Disagreement

If a Supervising Attorney declines to assist the intake office, the Supervising Attorney of the intake office may make an appeal. In all cases, prior to taking an appeal, the two Supervising Attorneys must first make a good faith effort to resolve the dispute. When the two Supervising Attorneys are in the same region, the initial appeal will be to the Regional Director. When the Supervising Attorneys are in different regions, or when one of the Supervising Attorneys disagrees with the decision of a Regional Director, the aggrieved Supervising Attorney can appeal to the Director for Advocacy.

6. Ongoing Representation

In most cases of dual-office representation, the intake office will accept the responsibility for locating documents and witnesses. It will usually be appropriate for the intake office to draft, prepare, and have the client execute many of the

documents needed for the case. Lawyers in either office can draft pleadings. They should attempt to reach consensus on the pleadings to be used.

Lawyers at both offices should work together with the client to identify the client's goals, arrive at a strategy for meeting those goals and evaluate results and reassess strategies during the course of representation.

7. Bookkeeping

The program can only have one open file for the case between the client and one adverse party. Each office should get a case number and enter client information. One office should accept the case as a staff case (S), and the other should categorize it as "T" to reflect that primary responsibility has been transferred to another office. The intake office should open the case as a staff case except where it expects that the other office will devote more time to the case. The Supervising Attorney at the intake office should advise the Supervising Attorney at the other office whether the intake office is going to record the case as an "S" or as a "T."

Advocates at each office should enter time records into the case number for that office. Both offices should keep their files open until work on the case ends. When the office doing the primary work closes the case, it should notify the other office, which should close its file as of the same date.

1213. Appointments

a. Staff Attorneys and Paralegals should give clients appointments when the clients want or need to come in to talk about developments in their cases.

1. The Staff Attorneys and Paralegals should post the appointments on the calendars on their computers.

2. The Staff Attorneys and Paralegals should inform support staff promptly of all scheduled client appointments.

b. Staff Attorneys and Paralegals will not schedule or make appointments for other attorneys or paralegals without express permission to do so.

1214. Client Documents

a. To preserve the integrity of the client's own file, the advocate will make at least one copy of each relevant client paper (e.g., summons and complaint, decrees, deeds, certificates, hearing notices, etc.) at the time the client gets the paper to the advocate. The copy can either be a hard copy or a scanned pdf that the advocate saves on his or her computer.

b. The advocate will return originals to the client except when the case requires the retention of the original papers (e.g., for introduction into evidence at a trial or hearing.) Where the advocate needs to retain originals, the advocate will provide the client with a copy of his or her document and will place the original in the client's file.

c. At the close of a case, the advocate will return documents to the client unless loss of contact with the client prevents this.

1. If the advocate does not return some documents, the advocate must preserve those documents in the file until such time as the file is destroyed as provided for in section 1208. This affords the client the opportunity to contact the office and obtain the documents.

2. If the file contains any original wills, original deeds or other documents that the advocate cannot return to the client, the file must be clearly marked to indicate that it contains such documents. This will allow for special treatment when the file comes due for destruction pursuant to section 1208.

1215. Confidentiality

a. Under no circumstances will any information furnished to LSA by an applicant or client, including information relating to eligibility, be disclosed to a person not employed by LSA without the express written consent of the client.

1. An adverse party whom an LSA client sues or with whom LSA engages in pre-litigation settlement discussions has a right to the signed statement of facts.

2. See sections 1217 and 1218 on case information disclosure.

b. Information relating to eligibility of a client will not be disclosed to an adverse party, court, administrative agency, or legislative or quasi-legislative body or any member or representative thereof.

1. Refer the party making such request or directing such disclosure to the Legal Services Corporation Act, 42 USC §2996(b)(1)(B), which prohibits such a disclosure.

2. The party requesting or directing such a disclosure will be informed that inquiries and complaints relating to eligibility determinations may be made to the Supervising Attorney, the Executive Director, and the Legal Services Corporation.

1216. Legal Research Materials

a. Each office has on-line access or hard copies of manuals from various sources, including such back-up centers as the National Consumer Law Center and the National Housing Law Project and other organizations such as the American Association of Retired Persons (AARP.)

b. Each office also has either on-line access or hard copies of manuals developed by LSA, such as the Consumer Law Manual.

c. Each office has hard and electronic copies of form pleadings, memoranda of law and other materials that can be used as models for drafting documents and for obtaining cases to start researching legal issues and has access to the portal, which contains a growing number of such documents.

d. Each advocate has a Lexis account for legal research and is expected to know how to use Lexis efficiently to research points of law.

e. Each advocate has access to the State Judicial Information System ("SJIS") of Alabama's Administrative Office of Courts and is expected to know how to use SJIS to track the progress of cases in court and to obtain information about court cases involving the advocate's clients and adverse parties.

f. Each advocate has the ability to access PACER. Each consumer advocate who is ever going to file a bankruptcy is expected to know how to use PACER to track the progress of cases in bankruptcy court and to use social security number and name to check to see about any prior bankruptcies filed by a client.

g. Each advocate is expected to review the portal regularly to learn about recently posted substantive information and to keep aware of LSA services and projects.

h. Advocates should make recommendations for improvement of any manuals to the office's Supervising Attorney, to the Advocacy Director for the relevant substantive law area or to the Director for Advocacy. They should also participate in the annual reviews of these manuals.

1217. Identification of Client and Pre-Complaint Statement of Facts

a. Before filing a complaint in a court of law or engaging in pre-complaint settlement negotiations on behalf of client represented with LSC funds, an advocate must have the client sign a statement enumerating the particular facts supporting the proposed complaint, insofar as they are known to the client when the statement is signed.

b. In the event of an emergency, when an advocate reasonably believes that delay is likely to cause harm to a significant safety, property or liberty interest of the client, the advocate may proceed with the proposed litigation or negotiation without a signed statement of facts, provided that the statement is prepared and signed as soon as possible thereafter.
For each case where the statement of facts was delayed because of an emergency, the client's file will include a statement of the nature of the emergency.

c. Although LSA advocates do not have to make a client sign a statement of facts in any of the three following circumstances, LSA advocates may still want to get a signed statement of facts:

1. Representation involves a client who is a defendant or a client who is involved in an administrative proceeding that responds to an action taken by a government agency, such as an unfavorable disability, welfare, unemployment, or housing authority decision; or

2. Only brief service, advice and/or referral activities are provided; or

3. Contact with another party is preliminary to negotiation or is not made in contemplation of litigation, such as when made to clarify the facts, to gauge the potential for later negotiation, or to resolve a matter on which LSA does not intend to pursue litigation.

d. A signed statement of facts prepared for purposes of complying with this policy will be retained in the client's file.

1218. Disclosure of Case Information

a. For each case filed by any full or part-time attorney employed by LSA upon the request of any person, LSA will disclose to that person the following information:

1. the name and full address of each party to the case, unless:

(a) the information is protected by an order or rule of court or by State or Federal law; or
(b) the attorney handling the case reasonably believes that revealing such information would put his/her client at risk of physical harm;

2. the cause of action sufficiently described to indicate the type or principal nature of the case;

3. the name and full address of the court where the case is filed; and

4. the case number assigned to the case by the court.

b. The case disclosure requirements apply:

1. only to an action filed on behalf of a plaintiff or petitioner who is LSA's client;

2. only to the original filing of a case, except for an appeal filed in an appellate court where the LSA attorney was not the attorney of record in the case below, and the LSA client is the appellant;

3. to a request filed on behalf of LSA's client in a court of competent jurisdiction for judicial review of an administrative action.

c. The case disclosure requirements do not apply to any case filed by a private attorney as part of any volunteer or reduced-fee lawyer program.

d. Nothing in this part shall require disclosure of:

1. Any information furnished to a recipient by a client;

2. The work product of an attorney or paralegal;

3. Any material used by a recipient in providing representation to clients;

4. Any matter that is related solely to the internal personnel rules and practices of the recipient; or

5. Personnel, medical, or similar files.

e. For each case filed in court by a full or part-time LSA attorney, a case information disclosure form will be completed and given to the Supervising Attorney, who will send forms to the Central Office at or just after the end of each month.

1. A copy of each such form will be kept in a central file that will be made available for copying when a request is received for the disclosure of case information.

2. A copy of the form for a particular client will also be kept in that client’s case file.

f. Any person who requests any such case information from LSA will be billed for photocopying plus actual costs of postage.

g. LSA will report semi-annually to the LSC the information required above for every case filed in court using a report format as specified by LSC.

1219. Appearing in Court on Paper and in Person

a. All LSA court papers will identify the attorney(s) of record in the manner illustrated below:

John/Jane Doe
Legal Services Alabama
207 Montgomery Street Suite 1100
Montgomery, Alabama 36104
(334) 832-4570
Attorney(s) for Plaintiff

b. Copies of all memoranda of law other than letter briefs and all non-routine pleadings filed in court are to be forwarded to one or more Advocacy Directors or to the Director for Advocacy, preferably in electronic format. When the Director for Advocacy receives a memorandum or pleading, he will review it and then send it to one or more Advocacy Directors. When an Advocacy Director receives a memorandum or pleading, he or she will consider the document for adoption as a model pleading or a revised model pleading.

c. Attorneys are responsible for their appearances in court and before administrative bodies, and scheduling priority will be given to such appearances. Paralegals are responsible for their appearances before administrative bodies, and scheduling priority will be given to such appearances.

1220. Tracking Court Appearances

a. All Attorneys and Paralegals must post on their computer calendars all court and administrative agency hearing appearances.

b. The Supervising Attorney will keep track of all of the court and administrative agency appearances calendared by his/her supervisees.

c. The Supervising Attorney may maintain and distribute a weekly docket of all court and administrative agency appearances.

1221. Withdrawal from Cases

a. Staff Attorneys and Paralegals will move to withdraw from cases if the client requests withdrawal, if the Staff Attorney or Paralegal learns of a conflict of interest, if the client becomes no longer eligible for LSA’s services or for other such cause.

b. The circumstances of such withdrawal will be consistent with the Code of Professional Responsibility and will not substantially prejudice the client's interests.

c. Upon withdrawal for any reason, the Staff Attorney or Paralegal will offer to refer such client to private counsel.

1222. Appeals

a. Considerations

1. The retainer agreement a client signs obligates an LSA lawyer to consider appeal whenever LSA believes that the client has a good chance of prevailing on appeal. A customary initial retainer does not commit LSA to appeal a case or to represent a client on appeal. Instead, the retainer commits LSA lawyers to discuss the possible merits of an appeal with the client.

2. A trial court may make an error of law that denies a client established rights. A trial court may act contrary to a client's interests where the law is unclear. Finally, a trial court may follow a decision of the Alabama Supreme Court that needs to be overruled. In any of these situations, effective representation of an individual client may entail filing an appeal, a certiorari petition or a mandamus petition to an appellate court.

3. At the same time, Legal Services Alabama cannot seek appellate review of every court action adverse to a client. 45 C.F.R. §1605 obligates Legal Services Alabama to promote efficient and effective use of LSC funds. It also prohibits filing frivolous appeals and appealing to any appellate courts without first obtaining authorization. LSA must assure the effective use of all of its funds and all the time of LSA's lawyers. Consequently, LSA requires authorization for all appeals to appellate courts and all certiorari petitions or mandamus petitions to appellate courts.

b. Appeal Authorization Procedure

1. Well before the time limit for filing an appeal or writ to challenge an action of a trial court adverse to a client, a lawyer should talk with that client. If the client wants to bring the case before an appellate court, and the lawyer believes that there would be a good chance of success, the lawyer should complete a Request for Authorization to File an Appeal or Writ Form. In completing the Request, the lawyer should explain the facts of the case, the legal issues involved, the estimated expenses attendant to the appeal or the writ, the estimated time for work on the appeal or writ, and the likelihood of success. If the lawyer knows that the client is likely to be unable to pay certain expenses incident to the appeal or writ, the lawyer should indicate this in the Request. The lawyer may choose to include with the Request a memorandum. This could be the lawyer's memorandum in support of a Rule 59 motion.

2. A lawyer will promptly submit the Request for Authorization to File an Appeal or Writ Form and any memorandum to the appropriate Advocacy Director and provide a copy to the lawyer's supervisor. If the Advocacy Director is unavailable, the lawyer may make the request directly to the Director for Advocacy. A lawyer expecting an adverse decision or awaiting a decision on a Rule 59 motion may submit the Request in advance of the trial court's final decision.

3. Giving careful consideration to any time deadline, the Advocacy Director will promptly evaluate the Request in terms of likelihood of success, the issues presented, the time and money required and how the case fits into LSA's priorities and core cases. If the Advocacy Director believes going to a higher court is justified, the Advocacy Director will promptly transmit the form to the Director for Advocacy by mail or fax. The Director for Advocacy will then evaluate the Request in terms of likelihood of success, the issues presented, the time and money required and how the case fits into LSA's priorities and core cases.

4. If the Advocacy Director declines to approve the Request, the lawyer may appeal to the Director for Advocacy. Before making a decision on the appeal, the Director for Advocacy will attempt to talk with the Advocacy Director. The Director will give careful consideration to the Advocacy Director's opinion and will otherwise evaluate the appeal in the same manner as a Request.

5. The decision of the Director for Advocacy is final.

6. Whenever the Director for Advocacy approves a Request, he will notify the lawyer, the Advocacy Director and the lawyer's supervisor immediately and will provide the lawyer with an approved Request. If the Request includes a request for payment of the costs of filing an appeal or writ, the Director for Advocacy will provide the Accounting Clerk with a copy of the Request.

1223. Staff Consultation/Team Litigation

a. Staff Attorneys and Paralegals are encouraged to consult with their Practice Group and with other attorneys and paralegals during client interviews or at any point during representation. Expertise of the Practice Groups and of colleagues should be exploited fully for the benefit of the client.

b. Advocacy Directors and the Director for Advocacy are available to supervise and assist Staff Attorneys/Paralegals and to co-counsel with them.

c. Generally, the Supervising Attorney, a Regional Director or an Advocacy Director or the Director for Advocacy may direct that attorney teams of two or three handle significant or complicated litigation. Such teams help overcome any inconvenience caused by vacations or illness, and the general unfamiliarity of a new Staff Attorney during his/her initial months at LSA.

1. It is important that all members of the team be introduced to the client at the earliest opportunity, and that the client understands that s/he may continue to call upon all members of the team for assistance.

2. The Supervising Attorney, Advocacy Director or Director for Advocacy may assign such teams to cases and will designate the attorney in charge.

1224. Advocacy Supervision

a. Overview

1. The Director for Advocacy and the five Advocacy Directors bear responsibility for effective advocacy program-wide. A Regional Director bears is responsible for effective advocacy within a region. An office's Supervising Attorney supervises and bears direct responsibility for all advocacy work by all the lawyers and paralegals in the office. The Supervising Attorney must ensure the office's staff provides high quality representation. This includes presenting the best available defenses and counterclaims and making use of the best strategies possible in advocating for their clients.

2. Because of the Supervising Attorney's obligation to oversee advocacy in the office, the Supervising Attorney will talk with each lawyer and paralegal in the office about what they are doing and planning to do for their clients during staff meetings, during periodic case reviews and in between case reviews as necessary. He or she will have the most complete picture of the office staff's advocacy. The Supervising Attorney also will talk regularly with all the Advocacy Directors and other members of the Practice Groups to stay aware of current developments and case strategies and reviews minutes from Practice Group meetings and communications from members of the Practice Groups. Those Advocacy Directors also have an affirmative obligation to keep the Supervising Attorneys aware of current developments.

b. Reviewing Case Strategies with the Office's Staff Attorneys and Paralegals

1. The Supervising Attorney will conduct weekly staff meetings to discuss new cases and interesting or perplexing developments in the office's existing cases. At these staff meetings, the Supervising Attorney will help advocates plan a strategy for the case. The advocate will then discuss that proposed strategy with the client. In determining strategy, the Supervising Attorney will rely on personal experience. The Supervising Attorney will also draw on information that has been provided by the Advocacy Directors and other members of their Practice Groups during meetings and conversations. Once the Practice Groups determine performance standards and practice guidelines that apply to a particular case, the Supervising Attorney will ensure the office's advocates follow those standards and guidelines.

2. At these initial case discussions and all subsequent ones, the Supervising Attorney should consider whether input from an Advocacy Director would be helpful.

3. At least once every three months, the Supervising Attorney will conduct a full case review with each advocate. The case review should identify for each case the last action taken, the next step to be taken and the overall plan for the case. For a more detailed discussion of case reviews, see section 1224. If the Supervising

Attorney is unsure how the advocate should proceed, the Supervising Attorney will either call an Advocacy Director or direct the advocate to call. If the Advocacy Director is unavailable, the call will be to another member of the Practice Group.

4. For every case that a Staff Attorney has in court and for any other case requiring protracted representation, the Supervising Attorney will discuss the case with the Staff Attorney or Paralegal at least briefly at least once every month. During these discussions, the Supervising Attorney will make sure that the Staff Attorney or Paralegal is moving the case along properly, researching the law as needed and developing evidence.

5. In most instances, Staff Attorneys and Paralegals will follow the advice provided by the Supervising Attorney. However, on some occasions, the advocates may disagree with the Supervising Attorney. Where the Supervising Attorney and an advocate disagree about the strategy to be followed in a case, they will try and resolve the disagreement among themselves. The Supervising Attorney will then tell the advocate how to proceed. If the advocate still disagrees, the advocate can appeal to the Advocacy Director with responsibility for the substantive area in which the disagreement arose. The Advocacy Director will consult with both the advocate and the Supervising Attorney before making a decision. If the Advocacy Director supports the advocate, the Supervising Attorney can appeal to the Director for Advocacy. If the Advocacy Director supports the Supervising Attorney, the advocate can appeal to the Director for Advocacy.

6. Before making any strategy decision that commits Legal Services Alabama to liability for an expense in excess of $100, such as a deposition for which the client is unable to pay, a Staff Attorney or Paralegal will talk with the Supervising Attorney. If the Supervising Attorney believes it reasonable to incur the liability, the Supervising Attorney will request authorization from the Director for Advocacy.

c. Caseloads

1. The Supervising Attorney determines caseloads for all the Staff Attorneys and Paralegals in the office.

(a) Once the Practice Groups determine caseload ranges for practice within their substantive areas, the Supervising Attorneys will use these caseload ranges as a guide and will avoid assigning cases that would exceed the caseload ranges.

(b) As part of monitoring caseloads, Supervising Attorneys will ensure that advocates close cases promptly after work on the files is done.

(c) Supervising Attorneys will act to see that Staff Attorneys and Paralegals have caseloads appropriate for their experience, and that a client is not denied the full service merited for his/her problems while a Staff Attorney or

Paralegal in the office could reasonably be expected to have the time to represent the client.

(d) In assigning caseloads, Supervising Attorneys will be mindful of the obligation of staff in the office to participate in Practice Groups, conduct community education sessions, meet and work with partner organizations and otherwise serve the client community through means other than direct client representation.

2. If a Staff Attorney or Paralegal believes that the Supervising Attorney is asking him or her to undertake representation in so many cases that it interferes with his or her ability to represent clients effectively, the Staff Attorney or Paralegal will prepare a memorandum explaining the basis for his or her belief. The Supervising Attorney will consider the memorandum and decide whether assignment of another case is appropriate.

3. If the Staff Attorney or Paralegal chooses to appeal the Supervising Attorney's decision, the Staff Attorney or Paralegal will email or otherwise deliver the memorandum to the Advocacy Director for the relevant substantive area. That Advocacy Director will then discuss the matter with the Supervising Attorney, bearing in mind that the Supervising Attorney should know the time demands in the Supervising Attorney's office. If they cannot reach an agreement, they will ask the Director of Advocacy to decide the matter.

d. Discussing Advocacy with Advocacy Directors

1. By the end of 2005, the Supervising Attorney will be able to rely on the Performance Standards and Practice Guidelines established by the various Practice Groups. In the meantime, Supervising Attorneys have to work with Advocacy Directors and with members of the Practice Groups to determine optimal practices in specific situations. Both before and after standards and guidelines are established, Supervising Attorneys will regularly discuss with Advocacy Directors the best ways of representing clients with particular kinds of substantive problems.

2. Each Advocacy Director will allocate time so as to be available to answer questions from and to discuss cases and strategies with Supervising Attorneys, Staff Attorneys and Paralegals, and will promptly reply to messages requesting advice or assistance. In addition, each Advocacy Director will periodically make calls to Supervising Attorneys to discuss developments in the Advocacy Director's assigned substantive area and arrange for visits to offices to go over these developments with the office staff. During office visits and between office visits, each Advocacy Directors will review pleadings, memoranda, letters, time sheets, entire files and any other work done in that Advocacy Director's assigned substantive area.

3. If an Advocacy Director learns that a Staff Attorney or Paralegal is not representing a client in an effective method or is advancing a claim or raising an

argument that the Advocacy Director considers either contrary to an established position of the Practice Group or for some other reason ill-advised, the Advocacy Director will advise both the Staff Attorney or Paralegal and the Supervising Attorney. The three will discuss the matter thoroughly and courteously and attempt to reach an agreement about the course to pursue. Where the three cannot agree, and the advocate chooses not to support the position of the Advocacy Director, the Advocacy Director will advise the Director for Advocacy. The Director for Advocacy will then make a final decision on the strategy to pursue after attending to the positions of the Staff Attorney.

1225. Case File Review

a. Purposes

1. Effective case file reviews that are conducted on a regular basis serve several purposes, all of which can work together to make Legal Services Alabama better at serving our clients.

(a) First, the case file reviews foster the continual improvement of every advocate's performance. They reinforce good practices, address poor practices and develop both the person whose files are being reviewed and the person doing the reviewing.

(1) Case reviews help determine additional training and supervisory needs.
(2) In other programs, advocates' knowledge that a qualified person would be reviewing their files every three months has led advocates to be consistent in their organization and in the documentation of their work. It has also pushed advocates to perform at higher levels, rising above their comfort zones.
(3) Some of these positive results have been achieved in offices in LSA that have conducted regular case reviews - even though we have not had statewide guidelines for the reviews.

(b) Second, case reviews are an effective form of internal quality control. They allow us to catch mistakes before clients are harmed – and before LSA could be harmed.

(1) We can avoid missed deadlines for lawsuits, appeals and motions.
(2) We can make sure that advocates are following a plan that is well-designed to meet client objectives to which we have agreed.
(3) We can insure that all compliance documents are properly completed and maintained in the file.
(4) We can assure that cases receive active attention, and that only those cases requiring active attention remain open.

(c) Third, the file review process is an important part of our commitment to make LSA more than a collection of sole practitioners.

(1) During the course of a file review, the supervisor and the advocate are working together to make sure that we are providing the best service we can to the client.
(2) We can identify any issues that the advocate should discuss with an Advocacy Director or member of a Practice Group.
(3) We can identify cases in which co-counseling would be appropriate.

(d) Fourth, file reviews provide accountability to our clients - and to our funders.

(1) We owe it to our clients to make sure we are working diligently and constructively to solve their legal problems, and we owe it to our funders to make sure we are spending their money well.
(2) Case reviews can document this – and we need to be able to let our clients and our funders know that we are taking these steps to insure the quality of our work.

b. Conducting an Effective Case File Review

1. File reviews should be a two-way learning process. The reviewer should always bear in mind: What practice, experience or skills does this advocate have that could help me or others at LSA? How can my experience or skills help this advocate – even if the advocate has more expertise in the relevant substantive area? How can I get the advocate training or other help from an Advocacy Director or a Practice Group member that could help the advocate perform more effectively? Finally, how can the advocate's work on a particular case help others in LSA serve their clients better?

2. Before, during and after a case file review, the supervisor should be considering all the issues and looking at the work of the advocate in light of them.

c. Preparation - Before reviewing an advocate's cases, a supervisor should take the following steps:

1. Review the advocate's last case file review and the report that was made on the basis of that review. In particular, the supervisor needs to note what next step the advocate had agreed to take on each case and the date by which the advocate would take that step. In addition, the supervisor should look through the reviewer's comments from the last report to see what suggestions the last person to do a case review made.

2. Go on SJIS and see what cases the advocate has in district or circuit court. While it may not be necessary to check every case on SJIS, a supervisor should check at least several to see what pleadings have been filed and what progress is being made on the case.

3. Set aside time for the case file review when the supervisor will not be disturbed. Allowing the case file review to drag on over several days would send a message that case review is not as important as whatever other matters might arise.

d. While Reviewing the Case Files outside the Presence of the Advocate

1. The supervisor must bear in mind that each file reviewed look at belongs to one of LSA's clients. The supervisor shares some responsibility for the quality of representation provided to that client. Because of this, the supervisor has a duty to understand what the advocate is doing in the case and either to provide guidance or direct the advocate to another source of any necessary guidance.

2. The term "case file" refers to the record Legal Services Alabama has for that case: both the hard paper file and the information entered into our Client database as time records and case memos. Even if the advocate has not used a memo field to record information about the case in an LSA database, go into the time records and look to see whether the advocate has recorded a time entry in the case since the last file review. If so, the supervisor should read at least the advocate's last time entry on the file.

3. For each case, the supervisor should answer each of the following questions and, if one of the answers is "no," the supervisor should address that issue on the case file review form or in the accompanying report:

(a) Are the goals of cases clear (in the retainer and the notes)?
(b) Does the file show what LSA agreed to do, actions taken and the next step anticipated? Does the file include a separate, appropriate "record file" specifically containing the formal actions of the case (pleadings, negotiations, demand letters, etc.)?
(c) Did the advocate begin addressing the problem promptly? Look for last-minute filings and gaps in time between intake and other points where a need for action is identified and action.
(d) Did the advocate communicate clearly and regularly with the client? Look at the readability level of the advocate's letters to the client.
(e) Did the advocate treat the client with respect, in letters, calls and interviews?
(f) Does the file contain appropriate compliance verification, including citizenship certifications or proof of alien eligibility, retainers (1611), plaintiff statements (1636), disclosure reports (1644), appeal approval (1605), etc.?
(g) Has the advocate documented offering to go over a benefits checklist with the client?

4. For each case where one of the following questions is relevant, the supervisor should answer the questions and, if the answer is "no," the supervisor should address that issue on the case file review form or in the accompanying report:

(a) If the case raises a housing issue (especially those within the context of a divorce or bankruptcy) are we qualifying the advocate's actions on that issue to count as a Housing Counseling case and seeking payment from WTLS?
(b) If the file identifies issues that should be opened as separate cases, has the advocate opened separate files?

(c) If the case file has a statement of facts, does that statement set forth particular facts supporting the client's entitlement to relief. The statement does not have to be wordy. However, it is not sufficient to say "eviction" or "needs bankruptcy." Instead, the statement should be in the nature of: "Client being evicted for alleged criminal activity. Client did not do what the Housing Authority claims." or "Client being evicted for alleged criminal activity. The Housing Authority did not send an adequate termination letter." or "Client being garnished and cannot afford the garnishment. The debt is dischargeable in bankruptcy."
(d) If the case is being submitted for closing, does any closing letter identify appeal times and address other unresolved issues?

5. The following issues should be kept in mind throughout the review, and each should be addressed in the context of a case where it is relevant. For each issue, every advocate should have a case where these questions can be asked.

(a) Does the advocate consult and document contact with appropriate people in the office, other LSA offices, other legal aid offices and national backup centers?
(b) If the reviewer is sufficiently familiar with the substantive law relevant to the case, is the advocate identifying the legal issues and taking zealous action in response to those issues?
(c) Does the advocate look for and document other issues that the client may face, and address those issues or refer them to other people or units?
(d) Is the advocate taking on new kinds of cases?
(e) Is he or she doing research and depositions and discovery and looking deliberately at whether this case should be appealed?
(f) Is the advocate appropriately looking for ways to produce systemic benefit from individual advocacy? Does he or she address fundamental issues in the administration of justice and in the substantive field of the law? Is there a record that he or she brings problems to the attention of Advocacy Directors, Practice Groups or other advocates in the state and nation? Look for ways that problems arising in one of the advocate's particular file might be used to address broader practices by courts, law enforcement, agencies or private institutions.
(g) Is the advocate formally co-counseling with anyone? Is the case appropriate for co-counseling? (We all need experience co-counseling.)
(h) Does the advocate seek appropriate review of significant written pleadings, letters or memos, and document such review in the file?

e. After the Case File Review

1. The supervisor meets personally with the advocate after completing the review and discusses the review, talking about how his or her practice is successful and how it might be improved.

2. The supervisor must set aside time for the discussion when neither the supervisor nor the advocate will be disturbed. This allows both of them to concentrate on the advocate's case file review. It also sends a message that case file review is at least as important as whatever other matters might arise.

3. The supervisor should promptly prepare a written review memo. Putting the issues in writing makes someone compose them more thoughtfully and clearly. The resulting memo is also more useful to the advocate. The memos will also be helpful to the next reviewers.

4. Case file review memos need to be written in sufficient detail to be useful to the advocate and to any subsequent reviewer. Each reviewer should make a thoughtful, deliberate effort to be helpful and to clearly identify strengths and potential improvements in a practice.

5. On the same day that the supervisor gives the advocate a copy of the case file review memo and the completed case file review form, the supervisor is to email or deliver copies of both to the Regional Director and separate copies to the Director for Advocacy.

1226. Other Forms of Review of Cases

a. Supervising Attorneys will not limit their review of cases to the periodic case file reviews described in section 1224.

1. They will review files during any staff meetings devoted for that purpose.

2. They will review a case or some aspect of a case whenever an advocate expresses a need for the review, or whenever some occurrence gives the Supervising Attorney reason to believe that a review is necessary.

b. Supervising Attorneys will review non-routine pleadings, memoranda and other documents prior to their execution or submission.

1. The Supervising Attorney should also review letters and routine pleadings of new advocates.

2. The more experienced the advocate, the fewer pleadings that a Supervising Attorney need pre-approve.

c. Closed cases will be reviewed on a case-by-case basis by the Supervising Attorney immediately prior to their closing.

1. The Supervising Attorney will determine whether the case submitted for closing is a case for LSC's Client Service Reporting ("CSR") purposes.

(a) If the submitted case lacks documentation of counsel and advice and/or other service, and/or the submitted case lacks documentation of citizenship or not fully documented person eligibility or lacks any other necessary compliance document, the Supervising Attorney will direct the advocate to correct the shortcoming, if possible.

(b) If the advocate is unable to obtain needed documentation, the Supervising Attorney will make sure that the "case" will not be reported to LSC as a case.

2. If the Supervising Attorney notes any action that the advocate should have undertaken on behalf of the client, the Supervising Attorney should advise the advocate of this and, if possible, to take that action.

d. Without inspecting any open case file of a volunteer or reduced-fee lawyer program lawyer, the Supervising Attorneys also must conduct a sufficient review of each volunteer or reduced-fee lawyer program case to determine whether the case is finished and needs to be closed.

1. The Supervising Attorney or his or her designee should use the State Judicial Information System ("SJIS") of Alabama's Administrative Office of Courts to try and determine whether the lawyer has filed suit for the client and, if so, to determine the progress being made on the case.

2. If the Supervising Attorney is unable to determine that the lawyer has taken action by looking on SJIS, the Supervising Attorney or his or her designee should write to the lawyer at least every three months to find the status of the case. While use of a form letter for such a purpose is permissible, the form letter should be revised so as to reflect any information the Supervising Attorney has about progress on the case.

3. If the Supervising Attorney has reason to believe that the case is ready to close, he or she or his or her designee should write a letter to the lawyer asking whether the case is ready to close and, in the case of a reduced-fee case, be billed.

1227. Closing Codes

a. Preamble

All offices must use the same closing codes for the same activity. Supervising Attorneys are responsible for ensuring that their office follows LSA practice and complies with LSC requirements. In addition to being familiar with this section, advocates should look at the LSC CSR Handbook (2001 edition), which is on the web at http://www.rin.lsc.gov/Reference%20Materials/Refrmats/CSR/CSR%20Handbook%202001.htm#5.1 In addition to stating the official LSC policy, this memo offers some elaboration on the meaning of what LSC says in the Handbook.

b. Remember that unless you are closing an accepted case, you have no basis for using any closing code. Refer to section 1204 for a description of what constitutes a case.

c. Closing Codes

Section 6.2 of the CSR Handbook provides:

> **When a program provides more than one type of assistance to an eligible client during the same reporting period (i.e., grant year) when attempting to resolve essentially the same legal problem, as demonstrated by the factual circumstances giving rise to the problem, the program shall report only the highest level of service provided. For example, if a program initially provides brief service in an attempt to resolve a client's legal problem, and the program later negotiates a settlement with an opposing party with respect to the same legal problem, the program shall report the case once as a negotiated settlement.**

1. In other words, the proper closing code is the one that reflects the highest level of activity performed and documented.

2. This is not necessarily the last thing that happened in a case, although it is in the example given at section 6.2. Consider an SSI case. During the course of representation of the client, an advocate provides advice, then obtains and analyzes medical records, then appears at an Administrative Law Judge hearing, then appeals to the Appeals Council, then files suit in federal court and obtains a remand, then represents the client at the new hearing and gets a favorable decision. The proper case closing code is "I" for the court order, even though the administrative hearing decision is what ended the case.

3. An explanation of each of the closing codes follows. Each begins with the definition from the CSR Handbook.

A = Counsel and Advice

A case closed as the result of the provision of advice to an eligible client in a case, e.g., the review of relevant information and the counseling of the client on action(s) to take to address a legal problem.

We can only use this code where we provide a client with legal advice relevant to the legal and factual issues presented by the client's case. A paralegal can always provide legal information, which tells a client about the state of law. The mere providing of legal information does not constitute a case.

An attorney can go further and advise the client about the law and legal issues as applied to the facts of his case. So can a paralegal practicing where paralegals can represent clients (such as a food stamp or SSI case.) A case closed with either legal advice is closed as "A" for counsel and advice.

Advocates must promptly close "counsel and advice" cases. By providing the advice within a day or two of seeing the client and then closing the case within a day or two of giving the advice, advocates can avoid many problems that can arise if the case is left open. These include confusion over the scope of our representation, possible legal malpractice and possible problems with a lack of a citizenship form in a telephone intake or hotline case kept open long enough to expect a citizenship form. It also helps avoid the problem of a case improperly remaining open past the close of a year. Sometimes, we may be planning to do more than advise a client, but the client does not return. For example, the client plans to return with papers and get a bankruptcy filed. If we do no more than advise the client about bankruptcy at intake, we will have to close this case as an "A." Therefore, we have to make sure that the file does not remain open for long waiting for the client to return.

B = Brief Service

A case closed as a result of an action taken at or within a few days or weeks of intake on behalf of an eligible client, e.g., the preparing of a short letter, the making of a telephone call, or the preparation of a routine legal document such as a simple will.

This category falls between mere advice and full-fledged representation. To use the code, the advocate must do something more than merely advise the client – and even something more than checking a statute or other source quickly and then advising the client. Generally, the action involves calling or writing to someone other than the client and/or conducting several hours of research and/or drafting a pleading for the client (that the advocate never files). The LSC CSR Handbook says that the case should close "as a result of action within a few days or a few weeks of intake."

Like cases closed as "A," you should close cases closed as "B" within a short time after intake. Cases opened before October 1 cannot remain open into the following year and then be closed as a "B." Time problems arise in "B" cases where the advocate is waiting on a response from a third party or the client. It is important to keep the case actively calendared. This way, you can be sure that an undue amount of time does not pass by.

If the advocate appears in court for the client (on paper or in person), then the advocate cannot close the case as a "B." Instead, the code will be "G" if we arrive at a settlement after litigation or "I" if there is any court order (including an order granting the advocate leave to withdraw.)

If the advocate enters an administrative appearance for the client, but does not perform intensive work on the case, the advocate can close the case as a "B." If the advocate has done intensive work, or the time period for closing the case as a "B" has run, the code will be "E" if we are forced to withdraw, "G" if we arrive at a settlement or "H" if there is any administrative decision. It is also possible to use the code "D" if we learn during the course of representation that the client lacks a meritorious claim.

C = Referred After Legal Assessment

A case closed in the course of providing assistance to an eligible client because the client is referred <u>outside</u> the program (e.g., to a social service agency or a non-LSC provider) because information in the case indicates that the program should not handle the case, or that the client would be better served by a referral outside the program.

This code can be used for referral to a legal services program in another state. It can also be a non-LSC provider such as the VFW for VA cases or the Counsel on Aging (in counties where LSA is not contracting with the Counsel on Aging.) Note that more than the advocate must perform more than a cursory assessment before making a referral.

The code does not apply to cases referred to other LSA offices. The referring office must reject those cases to avoid duplicate counting. There is no problem logging even several hours of time in a file rejected as a referral. It also does not apply to cases referred to volunteer or reduced-fee lawyer programs. Instead, those cases become volunteer or reduced-fee lawyer program cases. Finally, it does not apply to cases referred to the private bar. Those are generally either rejected or closed on advice.

D = Insufficient Merit to Proceed

A case closed after an applicant has been accepted as a client because new facts or circumstances arise or become apparent leading to the conclusion that there is an insufficient basis, in law or in fact, to pursue the case.

Use this code rarely. It applies in cases where we undertake representation, do more than advice or brief service and then learn that a client's case does not have an adequate basis in law or in fact.

If we reject a case right away as being without merit, that is a "Q" rejection. If we advise the client of the law and explain why the client's facts do not entitle her to relief, close the case as "A". If we make the determination after going to court or before an administrative agency that then issues a decision, close the case as "H" or "I".

1228. Advocacy Training

a. Attorneys, paralegals, support staff, or others involved in the representation of eligible clients are encouraged to participate in any training program, including skills, substantive and management training, as well as training programs sponsored by bar associations or continuing legal education institutions, that assists such employees and others to provide adequate legal assistance to eligible clients or advise eligible clients as to the legal rights of the clients.

1. If there are registration costs or overnight or out-of-state travel costs for such training, the staff member must seek permission from a Supervising Attorney.

2. If the Supervising Attorney finds the expenditure reasonable and the training appropriate for the staff member, the Supervising Attorney will seek approval from the Director for Advocacy.

b. LSA employees will participate in training activities intended to inform staff about what activities are prohibited by the LSC Act, or other applicable Federal law, or LSC regulations, guidelines or instructions.

c. It is impermissible for any individual, while engaged in legal services activities funded by LSA, to participate in or conduct a training program for the purpose of:

1. advocating a particular public policy;

2. encouraging a political activity, a labor or antilabor activity, a boycott, picketing, a strike, or a demonstration, or the development of strategies to influence legislation or rulemaking;

3. disseminating information about such a policy or activity; or

4. training participants to engage in activities prohibited by the LSC Act, other applicable law, or LSC regulations, guidelines or instructions.

1229. Community Education

a. The Supervising Attorney will participate with the Regional Director to develop and implement a regional community education plan.

b. On a regular basis, the Supervising Attorney will schedule meetings with community groups to report on recent developments in the law, and to solicit suggestions for improving the quality of service to the community.

c. Regional Directors, Advocacy Directors, Supervising Attorneys, Staff Attorneys and Paralegals will make themselves available to community groups, client groups and other

organizations for community education presentations on issues of concern to low income people.

d. Each Supervising Attorney is responsible for making sure that the office has community education materials, such as fact sheets, and for being familiar with the community education materials available through LSA's websites.

1230. Special Assistance

a. When an attorney or paralegal has determined that a case requires the assistance of another professional - a court reporter, physician, psychiatrist, teacher, etc. - in trial preparation or as an expert witness, s/he should communicate that need to the Supervising Attorney.

b. If the assistance of the professional would require an expenditure of LSA funds, the Supervising Attorney should seek authorization for the expense in accordance with LSA's litigation expense policy

1231. Litigation Expense Policy

a. Considerations

1. Representation of clients in court and at administrative hearings sometimes requires expenditures of money. Common expenses include fees for filing lawsuits or for filing counterclaims in some courts; subpoena fees; copying costs; costs for transcripts of court hearings; and deposition costs.

2. LSA has limited funds to help large numbers of needy people. We must provide high quality representation to our clients and at the same time attempt to minimize the money LSA must pay for litigation costs.

b. Language in Retainer

1. When a client signs a Legal Services Alabama ("LSA") retainer form, the client expresses an understanding of a possible need "to pay for some costs charged by others. These may include charges for filing in court, serving papers, medical records, subpoenas, transcripts and depositions." LSA commits to "try to get costs waived."

2. The retainer form also implicitly recognizes that LSA will sometimes advance costs for a client. The client agrees to repay, whether or not the client obtains an affirmative recovery: "If LSA advances costs in connection with my case, I will pay LSA back. If I get money because of LSA's representation, I will use that money to repay LSA."

3. Advocates need to make sure that clients understand these sections of the retainer.

4. Each office must have a policy to ensure that when a client brings in a check or money order to repay all or part of a litigation cost paid by the LSA Central Office, that check or money order is sent to the Accounting Clerk along with information sufficient to identify the advance it is repaying.

c. Advance Planning

1. Lawyers and paralegals are generally able to anticipate the need for many types of litigation expenses well in advance.

2. As soon as a lawyer or paralegal realizes that a client's case may require litigation expenses, the lawyer or paralegal should discuss the expenses with clients.

3. The lawyer or paralegal may want to remind the client of the language from the retainer agreement and explain LSA's limited funding. When given advance

notification, clients are often able to save the money (or get money from family members) to pay for the costs.

4. When an advocate anticipates the need for a litigation expense that a client will probably not be able to pay, the advocate should prepare a Request for Litigation Expense Authorization form.

d. Particular kinds of litigation expenses

1. Filing Fees

(a) In the case of filing fees, lawyers and paralegals should determine whether the client could proceed by affidavit of substantial hardship or by in forma pauperis affidavit.

(b) If not, the advocate should advise the client of the need to pay the filing fee. Only in exceptional circumstances should LSA pay a filing fee to initiate litigation – and even then it should seek to have the client repay.

(c) For those cases in which filing a counterclaim would improve the client's prospects in the litigation, it may be best to file the counterclaim at the same time as the answer. If the client lacks the funds to pay a filing fee for the counterclaim, the client may be able to tender the counterclaim along with an affidavit of substantial hardship. If the Court denies the affidavit, the client would have some time to try and get up the money.

(d) Sometimes, courts that grant an affidavit of substantial hardship bill LSA when the case ends adversely. If the Supervising Attorney is unable to convince the clerk that LSA is not responsible, the Director for Advocacy will write the clerk a letter explaining that LSA does not owe and cannot afford to pay these expenses.

(e) Where LSA lawyers have signed as sureties for an appeal, however, LSA will owe court costs if the client does not pay them.

2. Copies of Records

(a) For medical records, lawyers and paralegals should see whether the holder of the records will supply them without charge. For example, SMART, which supplies many medical records, routinely waives charges to LSA upon receiving a copy of our non-profit letter. If the fees are not waived, LSA should look for the client (or the client's family) to pay.

(b) The same considerations apply in other instances where LSA is trying to get documents. For instance, in a subpoena requesting documents, a lawyer should use language such as:

"In the event you elect to send copies of the requested documents, plaintiff agrees to pay you the reasonable cost of producing and mailing the copies. If you want payment in advance and give advance notice of the cost, plaintiff will pay in advance. However**,** Legal Services Alabama is a non-profit organization and would appreciate any copies you choose to send free of charge."

3. Depositions

(a) One of the most expensive litigation costs is for the taking and transcription of depositions. When a client is unable to save the money or get it from other family members, LSA lawyers and paralegals have to look for ways to protect the client's interests without paying for deposition transcripts.

(b) If another party is taking a deposition, an advocate may not need to purchase a copy. Notes at the deposition may be sufficient except where a deponent makes a statement that has to be used at trial for cross examination. When that occurs during a deposition, the lawyer should advise our client of the value of getting a copy of the transcript. Although court reporters will always ask at the onset of a deposition if a lawyer wants a copy, most are willing to bill at first-copy rate when the lawyer requests a transcript within a week of the deposition.

(c) If the advocate and client decide that taking a deposition would significantly assist a case, they should also discuss the expected cost of the deposition and attempt to arrive at a plan for the client to pay the cost.

e. Litigation Expense Request Procedure

1. Before obligating LSA for any litigation expense in excess of $50, a lawyer or paralegal must first submit a request for authorization to incur litigation expenses to his or her supervisor. The request should be made on a Litigation Expense Authorization Form except where a lawyer is requesting authorization to appeal and authorization to incur expenses incident to that appeal. In that case, the Authorization to Appeal Form serves as a request to incur the incidental expenses identified in that form. If a lawyer realizes that an appeal may give rise to expenses other than those identified in an Authorization to Appeal Form, and the client is unable to pay those expenses, the lawyer should submit a Litigation Expense Authorization Form.

2. When a supervisor receives a Litigation Expense Authorization Form, the supervisor will consider whether the case is core and evaluate options other than having LSA pay. If the supervisor finds the expense is necessary, the supervisor will sign the request and add to it any further justification for LSA incurring the cost. The supervisor will then relay the request to the Director for Advocacy.

3. The Director for Advocacy may call an Advocacy Director, a Supervising Attorney and/or the requesting advocate to help decide whether to approve a request. The Director for Advocacy will consider the funds budgeted for litigation expenses, the need for the expenditure and the priority of the case.

4. If the Director for Advocacy approves the request, he will promptly notify the requestor. If there is immediate need for a check in a certain amount, the requestor should let the Director for Advocacy know. Upon being advised how to make out a check, the Director for Advocacy will forward the request to the Accounting Clerk for issuance of a check.

5. In cases where the bill is not immediately due, or where the amount of the bill is not yet known, the requesting advocate should retain a copy of the approved litigation request form. When the requestor receives a bill for the approved expense, he or she should submit the bill to the Accounting Clerk along with a copy of the approved litigation form.

6. If some emergency prevents a lawyer or paralegal from making a request before incurring an expense, the lawyer or paralegal must submit the request at the earliest possible opportunity. Requests made after incurring expenses are disfavored.

f. Conclusion

LSA has a budget line for litigation costs. It will go further if used only where necessary – and if replenished by repayment from clients of advanced funds.

1232. Paralegal Practice Guidelines

While paralegals must scrupulously avoid engaging in the unauthorized practice of law, paralegals possess the training, skill and expertise to provide valuable assistance to LSA attorneys and clients in a wide variety of substantive areas. LSA must utilize the experience and expertise of paralegals in a broad range of cases to provide complex assistance to clients and attorneys in both administrative and legal cases. Like attorneys, paralegals must be provided with training and supervision to expand knowledge and skills in different areas of practice, to allow LSA to assist clients in the most economical and efficient manner. The following standards are minimum mandatory standards binding on all LSA advocates.

a. An LSA paralegal must work under the supervision of an attorney who is ultimately responsible for all actions and omissions of the paralegal. The attorney does not need to review every letter or monitor every conversation of the paralegal. The degree of supervision will vary depending on many factors, including

1. The training and experience of the paralegal;
2. The complexity of the matter;
3. The paralegal's expertise in the area;
4. The degree of confidence that the paralegal will properly comply with these standards and the Alabama Rules of Professional Conduct; and
5. The degree of confidence that the paralegal will immediately and fully relate to the attorney any facts or issues that might require the exercise of an attorney's independent professional legal judgment. In all cases an attorney must adequately and appropriately supervise the work product of the paralegal.

b. Even in administrative cases where federal statute or regulation authorizes non-lawyer representation, the supervising attorney is ultimately responsible for the work product of a paralegal. The degree of supervision in such cases will ordinarily be less than in legal cases, but must be sufficient to ensure that the client is being adequately and competently represented. The attorney must ensure that the attorney deals with any legal issues that arise outside the administrative arena.

c. Except in matters entirely within the ambit of administrative practice open to paralegals, only an attorney can provide direct services to a client that require the exercise of independent professional legal judgment. Thus, a paralegal cannot give legal advice outside the legal ambit of administrative practice open to paralegals.

1233. Legal Services Corporation Act Prohibitions

a. The Legal Services Corporation Act, 42 USC §2996 et seq., imposes some restrictions on LSA and its other grantees, and continuing resolutions have also continued prohibitions that were first placed on LSC grantees in 1996.

b. LSA employees must understand what actions are prohibited by the Legal Services Corporation Act, continuing resolutions or LSC regulations, so that they can avoid violating restrictions without having to curtail their activities to such a degree as to deny their clients effective representation.

c. A detailed description of restrictions follows. If any LSA employee has any questions about any LSC restrictions or prohibitions, that employee should ask his or her Supervising Attorney or the Director for Advocacy.

1234. Legislative and Administrative Rulemaking Prohibitions

a. Except as permitted by Sections c and d below, it is impermissible for any individual, while engaged in legal services activities funded by LSA, to initiate or to participate in any effort that:

1. attempts to influence the passage or defeat of any legislation or constitutional amendment, or any initiative, referendum or similar procedure of the Congress, any state legislature, local council, or similar governing body acting in a legislative capacity;

2. attempts to influence any provision in a legislative measure appropriating funds to, or defining or limiting the functions or authority of, LSA or the Legal Services Corporation (LSC) (e.g., self-help lobbying);

3. attempts to influence the conduct of oversight proceedings of any legislative body concerning LSA or LSC;

4. attempts to participate in or influence any rulemaking, which is defined to include agency processes for formulating, amending, or repealing rules, regulations or guidelines of general applicability and future effect issued by the agency pursuant to Federal, state or local rulemaking procedures, including notice and comment rulemaking and adjudicatory proceedings that are formal adversarial proceedings to formulate or modify an agency policy of general applicability and future effect;

5. attempts to influence the issuance, amendment, or revocation of any executive order; or

6. pays for any personal service, advertisement, telegram, telephone communication, letter, printed or written matter, administrative expense, or related expense, associated with any activity prohibited in the six preceding paragraphs.

b. It is impermissible for any individual, while engaged in legal services activities funded by LSA, to engage in any grassroots lobbying activities.

1. "Grassroots lobbying activities" include:

(a) any oral, written or electronically transmitted communication or any advertisement, telegram, letter, article, newsletter, or other printed or written matter or device that contains a direct suggestion to the public to contact public officials in support of or in opposition to pending or proposed legislation, regulations, executive decisions, or any decision by the electorate on a measure submitted to it for a vote; and

(b) the provision of financial contributions to, or participation in, any demonstration, march, rally, fundraising drive, lobbying campaign, letter writing or telephone campaign for the purpose of influencing the course of such legislation, regulations, decisions by administrative bodies, or any decision by the electorate on a measure submitted to it for a vote.

2. "Grassroots lobbying activities" do not include communications which are limited solely to reporting on the content or status of, or explaining, pending or proposed legislation or regulations.

c. Notwithstanding the prohibitions outlined in a and b above, it is permissible for any individual, while engaged in legal services activities funded by LSA, to:

1. provide administrative representation for an eligible client in a proceeding that adjudicates the particular rights or interests of such eligible client or in negotiations directly involving that client's legal rights or responsibilities, including pre-litigation negotiation and negotiation in the course of litigation;

2. initiate or participate in litigation challenging agency rules, regulations, guidelines or policies, unless otherwise prohibited by law or LSC regulations;

3. communicate with a governmental agency for the purpose of obtaining information, clarification, or interpretation of the agency's rules, regulations, practices, or policies;

4. inform clients, other recipients funded by LSA or LSC, or attorneys representing eligible clients, about new or proposed statutes, executive orders or administrative regulations;

5. communicate directly or indirectly with LSC for any purpose, including commenting upon existing or proposed LSC rules, regulations, guidelines, instructions, and policies;

6. participate in meetings or serve on committees of bar associations, provided that no resources of LSA are used to support prohibited legislative or rulemaking activities and that LSA is not identified with those activities of bar associations that include such prohibited activities;

7. advise a client of the client's right to communicate directly with an elected official;

8. participate in activity related to the judiciary, including the promulgation of court rules, rules of professional responsibility and disciplinary rules; or

9. participate as legal adviser to, as an LSA representative to, or as a member of, an organization, task force, consortium, advisory board, or committee, which has as its primary purpose improving service to LSA clients, sharing information about community resources or needs, providing community legal education, or any other non-prohibited purpose.

d. LSA employees may use non-LSC funds to provide oral or written comments to an agency and its staff in a public rulemaking proceeding which includes notice and comment rulemaking and other public proceedings.

1. an LSA employee may testify orally or in writing;

2. provide information which may include analysis of or comments upon existing or proposed rules, regulations or legislation, or drafts of proposed rules, regulations or legislation;

3. testify before, or make information available to, commissions, committees or advisory bodies; or

4. participate in negotiated rulemaking.

5. Any such participation by an LSA employee requires prior approval from the Executive Director or Director for Advocacy and must be made under the following conditions:

(a) communications made in response to requests may be distributed only to the party or parties that made the request or to other persons or entities only to the extent that such distribution is required to comply with the request;
(b) no LSA employee may solicit or arrange a request from any official to testify or otherwise provide information in connection with legislation or rulemaking;
(c) LSA employees will maintain copies of all written requests received and any written responses made in response thereto and will provide such

requests and responses to the Executive Director or to the Director for Advocacy.

e. Upon receiving approval from the Executive Director or Director for Advocacy, LSA employees may use non-LSC funds to contact or communicate with or respond to a request from, a state or local government agency, a state or local legislative body or committee, or a member thereof, regarding funding for LSA, including a pending or proposed legislative or agency proposal to fund LSA.

1. communications made in response to requests may be distributed only to the party or parties that made the request or to other persons or entities only to the extent that such distribution is required to comply with the request;
2. no LSA employee may solicit or arrange a request from any official to testify or otherwise provide information in connection with legislation or rulemaking;
3. LSA employees will maintain copies of all written requests received and any written responses made in response thereto and will provide such requests and responses to the Executive Director or to the Director for Advocacy.

f. Supervising Attorneys will complete monthly reports of legislative and rulemaking activities conducted by LSA staff using non-LSC funds, and will forward the report to the Central Office, which will complete and forward to LSC semi-annual reports describing program legislative and rulemaking activities conducted pursuant to this section using report forms prescribed by LSC for this purpose.

1235. Redistricting

a. It is impermissible for any individual, while engaged in legal services activities funded by LSA, to advocate or oppose any plan or proposal, or represent any party or participate in any other way in litigation related to redistricting, or to make available any equipment for use in such activities.

1. "Advocating or opposing any plan" means any effort, whether by request or otherwise, even if of a neutral nature, to revise a legislative, judicial, or elective district at any level of government.

2. "Redistricting" means any effort, directly or indirectly, that is intended to or would have the effect of altering, revising, or reapportioning a legislative, judicial, or elective district at any level of government, including influencing the timing or manner of the taking of a census.

b. This policy does not prohibit any litigation brought under the Voting Rights Act of 1965, as amended, 42 U.S.C. 1971, et seq., provided such litigation does not involve redistricting.

1236. Representation of Incarcerated Persons

a. It is impermissible for any individual, while engaged in legal services activities funded by LSA, to participate in any civil litigation on behalf of a person who is incarcerated in a Federal, State or local penal facility maintained under government authority or to participate in administrative proceedings on behalf of such person challenging the conditions of incarceration. This limitation applies to all persons so incarcerated, regardless of whether they are a plaintiff or defendant in litigation.

1. Incarcerated" means the involuntary physical restraint of a person who has been arrested for, or convicted of, a crime.

2. “Civil litigation” refers to representation in a case that someone has filed in court and does not refer to administrative cases, such as SSI hearings.

b. If, during the period when LSA is representing a client in litigation, the client’s LSA lawyer learns that the client has become incarcerated, the attorney must use his or her best efforts to withdraw from the litigation, unless the period of incarceration is anticipated to be brief and the litigation is likely to continue beyond the period of incarceration.

1. In each such case, the client's file must include:

(a) documentation indicating the date when LSA was notified of the client's incarceration and the LSA attorney's efforts to withdraw from he litigation; or

(b) a statement detailing the reasons why LSA anticipates that the period of incarceration is likely to be brief and the litigation is likely to continue beyond the period of incarceration.

2. Each month, the Supervising Attorney of each office must send to the Central Office a report providing the number of incarcerated persons whom the office has represented in civil litigation and copies of each form on representation of incarcerated persons in civil litigation.

c. This policy does not apply to cases and matters on behalf of persons who are incarcerated that involve neither litigation in court nor administrative proceedings challenging the conditions of incarceration.

d. This policy also does not apply to persons who are detained in mental health facilities, juvenile facilities or other detention facilities that are not penal facilities.

1237. Assisted Suicide, Euthanasia and Mercy Killing

a. In compliance with 45 C.F.R. Part 1643, it is impermissible for any individual, while engaged in legal services activities funded by LSA, to assist in, support, or fund any activity or service which has the purpose of assisting in, or to bring suit to provide any other form of legal assistance for the purpose of:

1. securing or funding, or compelling any person, institution, or governmental entity to provide or fund, any item, benefit, program, or service furnished for the purpose of causing, or the purpose of assisting in causing, the suicide, euthanasia, or mercy killing of any individual; or

2. asserting or advocating a legal right to cause, or to assist in causing, the suicide, euthanasia, or mercy killing of any individual.

b. Nothing in this policy will be interpreted to limit or interfere with the operation of any statute or regulation governing activities listed above.

c. Nothing in this policy will be interpreted to apply to any of the following:

1. the withholding or withdrawing of medical treatment or medical care;
2. the withholding or withdrawing of nutrition or hydration;
3. abortion;
4. the use of items, goods, benefits, or services furnished for purposes relating to alleviation of pain or discomfort even if they may increase the risk of death, unless they are furnished for the purpose of causing or assisting in causing death; or
5. the provision of factual information regarding applicable law on assisted suicide, euthanasia and mercy killing.

d. This policy does not apply to activities funded from sources other than LSC.

1238. Representation in Certain Eviction Proceedings

a. It is impermissible for any individual, while engaged in legal services activities funded by LSA, to defend any person in a proceeding to evict that person from a public housing project if:

1. the person has been charged with or has been convicted of the illegal sale, distribution or manufacture of a controlled substance, or possession of a controlled substance with the intent to sell or distribute; and

2. the eviction proceeding is brought by a public housing agency on the basis that such illegal drug activity, for which the person has been charged or for which the person has been convicted, threatens the health and safety of other tenants residing in the public housing project or employees of the public housing agency.

3. For purposes of this policy, a person is considered to have been "charged with engaging in illegal drug activities if a criminal proceeding has been instituted against such person by a governmental entity with authority to initiate such proceeding and such proceeding is pending.

4. This prohibition does not bar representation of:
   (a) any section 8 tenant;
   (b) a public housing tenant charged with simple possession of a controlled substance; or
   (c) a pubic housing tenant whose lease termination notice does not indicate that the client's behavior threatens the health and safety of other tenants residing in the public housing project or employees of the public housing agency.

b. Each advocate who represents a client in a proceeding to evict the client from a public housing project because that client was charged with or convicted of the illegal sale, distribution or manufacture of a controlled substance, or possession of a controlled substance with the intent to sell or distribute must complete the Certain Eviction Proceedings Form to indicate the basis for representation of the client.

c. Supervising Attorneys will complete monthly reports stating the number of clients represented in proceedings to evict the client from a public housing project because that client was charged with or convicted of the illegal sale, distribution or manufacture of a controlled substance, or possession of a controlled substance with the intent to sell or distribute controlled substance with the intent to sell or distribute and will forward the report to the Central Office, along with copies of each Certain Eviction Proceedings Form.

d. LSA will maintain a list of all cases which involve an eviction from public housing and there is an allegation of drug sale, distribution or manufacture of drugs, or possession of drugs with intent to sell or distribute, and each client's file in such cases will include documentation that demonstrates why the representation was permissible.

1239. Representation in Matters Relating to Efforts to Reform a Welfare System

a. No individual engaged in legal services activities funded by LSC will initiate legal representation or participate in any other way in litigation, lobbying or rulemaking involving efforts to reform a Federal or State welfare system, including participation in:

1. litigation challenging laws or formal regulations enacted as part of an effort to reform a Federal or State welfare system; or

2. rulemaking or lobbying undertaken directly or through grassroots efforts involving proposals that are being considered to implement a reform of a federal or state welfare system.

3. For purposes of this policy, reform of a federal or state welfare system means:

(a) the Federal and State Temporary Assistance to Needy Families Block Grant programs, including separate State programs as well as programs continued under Federal waiver authority;

(b) the General Assistance program conducted by a State or county with State funding or under State mandate;

(c) other provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, except for the child support provision in Title III; and

(d) new programs or provisions enacted to replace or modify these programs.

b. LSA staff may provide advice and representation to individual clients who are seeking specific relief from a welfare agency under a welfare reform law or regulation, so long as such representation does not seek to invalidate an existing Federal or State welfare reform statute or a regulation formally adopted pursuant to public notice and comment. Such representation may involve negotiation with agency officials, representation in administrative hearings and representation in court seeking judicial review over agency actions.

c. LSA staff may use non-LSC funds to comment in a public rulemaking proceeding involving welfare reform or to respond to a written request from a government agency, or official thereof, elected official, legislative body or committee, or member thereof, to provide information or to testify on welfare reform.

d. LSA staff may obtain information, clarification or interpretation of welfare agency rules and policies and discuss regulatory and legislative developments with others at Public Benefits or CED Practice Group meetings or in other settings.

1240. Attorneys' Fees

a. It is impermissible for any individual, while engaged in legal services activities funded by LSA, to claim, or collect and retain attorneys' fees on behalf of the program or a client as a result of representation of the client in court or administrative litigation, where an award of attorneys' fees is available pursuant to Federal or State law.

1. "Attorneys' fees" means an award to compensate an attorney of the prevailing party made pursuant to common law or Federal or State law permitting or requiring the awarding of such fees, or a payment to an attorney from a client's retroactive statutory benefits.

2. "Award" means an order by a court or an administrative agency that the unsuccessful party pay the attorneys' fees of the prevailing party, or an order by a court or administrative agency approving a settlement agreement of the parties which provides for payment of attorneys' fees by the adversarial party.

3. To "claim" attorneys' fees means to include a request for attorneys' fees in any pleading, whether fees are to be paid to the staff attorney, LSA or to the client.

b. This policy does not apply to the following:

1. cases or matters in which a court appoints an LSA staff attorney to provide representation pursuant to a statute or a court rule or practice equally applicable to all attorneys in the jurisdiction, and in which the program receives compensation under the same terms and conditions as are applied generally to attorneys practicing in the court in which the appointment is made;

2. cases or matters which the recipient undertakes pursuant to a grant, contract or other agreement by a governmental agency or other third party, where the third party pays for LSA to undertake the representation of clients;

3. sanctions imposed by a court for violations of court rules or practices, including Rule 11 or discovery rules of the Federal Rules of Civil Procedure or of the Alabama Rules of Civil Procedure or statutes; or

4. reimbursement of costs and expenses from an opposing party; or

c. This policy applies to private attorneys who undertake representation of eligible clients and who are compensated for their time and effort by LSA for such representation. This restriction does not apply to private attorneys who undertake pro bono representation of eligible clients referred to them by LSA, even if the private attorneys are reimbursed for their out-of-pocket expenses by LSA. This restriction does not apply to co-counsel who undertake joint representation on a pro bono basis of eligible clients with LSA, but such pro bono counsel may only claim and collect attorneys' fees for work performed by co-counsel.

1241. Restrictions on Solicitation

a. It is impermissible for any individual, while engaged in legal service activities funded by LSC, to represent an individual as a result of in-person unsolicited advice provided by an employee of LSA or other provider of legal services funded by LSC, or to refer any individual to whom they have given in-person unsolicited advice to LSA or to another provider of legal services funded by LSC.

1. "In-person" means a face-to-face encounter or a personal encounter through other means of communication such as a personal letter or telephone call.

2. "Unsolicited advice" means advice to obtain a counselor or to take legal action given to an individual who did not seek the advice or with whom LSA does not have an attorney-client relationship.

b. This policy does not prohibit LSA employees from:

1. providing to an existing client any advice warranted by professional responsibility to the client; or

2. providing information regarding legal rights and responsibilities or providing information about LSA services and intake procedures through client and community education activities, other outreach activities, public service announcements, maintaining an ongoing presence in a courthouse to provide advice at the invitation of the court, disseminating community legal education publications, maintaining a website with legal information relevant to the problems of low income residents of Alabama or giving presentations to groups that request such information, and providing legal representation to otherwise eligible individuals who seek such representation as a result of information provided as part of that activity; or

3. responding to an individual's specific question about whether the individual should consult an attorney or take legal action, or responding to an individual who makes a specific request for information about the person's legal rights or who asks for assistance in connection with a specific legal problem; or

c. representing or accepting referrals of clients if the employee is part of, or received the referral from, an ombudsman program operated by LSA or by another legal services program funded by LSC, as long as the ombudsman program is a statutory or private program that provides investigatory and referral services and/or legal assistance on behalf of persons who are unable to seek assistance on their own, including, but not limited to, those who are institutionalized or are physically or mentally disabled.

d. This section should be read in conjunction with the Alabama Rules of Professional Conduct.

1242. Class Actions

a. It is impermissible for any individual to initiate or participate in any class action suit.

1. "Class action suit" means a lawsuit filed as, or otherwise declared by the court having jurisdiction over the case to be, a class action pursuant to Rule 23 of the Alabama Rules of Civil Procedure or Rule 23 of the Federal Rules of Civil Procedure.

2. "To initiate or participate in any class action suit" means any involvement at any stage of a class action prior to or after an order granting relief, including acting as amicus curiae, co-counselor providing representation relating to a class action.

3. "To initiate or participate in any class action suit" does not include representation of an individual client seeking to withdraw from or opt out of a class or obtain the benefit of relief already ordered by a court in a class action, or non-adversarial activities, including efforts to remain informed about, or to explain, clarify, educate or advise others about the terms of an order granting relief.

b. This policy does not preclude the representation of multiple parties or eligible groups, nor does it proscribe the use of other relevant judicial or statutory procedures, including, those related to: third-party practice; joinder; interpleader; intervention; consolidation; mandamus; declaratory judgment; or injunctive relief.

c. LSA will maintain a list of any class action case where it, or an attorney employed by LSA, is counsel of record and is involved in such non-adversarial activities as described in l(c) above. Such list will include the name of each case, the court where the case is being litigated, and the status of the case, including a description of the non-adversarial activities.

SUBPART 1300 CLIENT GRIEVANCES

Pursuant to 45 C.F.R. Part 1621, the Board of Directors of Legal Services Alabama hereby establishes the following procedures for receiving and processing grievances from people who believe that they have wrongly been denied legal assistance and from people who are dissatisfied with any assistance provided:

1301. Client Relations Committee

a. The Board of Directors of Legal Services Alabama ("LSA") has established from within its membership a Client Relations Committee (hereinafter referred to as the "Committee") and named a chair for the Committee. The Board has also appointed five members to serve on the Committee. The percentage representation of lawyers and clients on the committee is approximately the same as their percentage representations on the Board. If vacancies should arise on the Committee, members will be appointed so as to ensure that the composition continues to have approximately the same percentage representation of lawyers and clients on the committee as the percentage representation of the Board.

b. The Committee is responsible for receiving, reviewing and disposing of client complaints about (1) the manner of quality of legal assistance that has been rendered and (2) denial of legal assistance.

c. The Committee is also responsible for receiving and reviewing copies of client satisfaction surveys from which any identifying information has been removed. This information will provide the Committee with a context for evaluating client grievances. It will also provide a means for the Board to monitor satisfaction of clients across the program so as to be able to make suggestions to the Executive Director about improving client service.

1302. Definition of Grievance

A grievance is any complaint by a client or applicant for services that the client or applicant either reduces to writing or asks be treated as a grievance. A client or applicant for services may file a grievance in person, by telephone or by mail. If any LSA employee is uncertain whether a client or applicant for services is making a grievance, that employee should ask whether the client or applicant wants the complaint treated as a grievance.

1303. Notice of Grievance Procedure

a. Written Notice
At the time a client or applicant for services first comes to an LSA office, that office will provide him or her with an office-specific notice providing information about the existence and nature of the grievance procedure, including the manner in which to file a grievance. Every office will also post a copy of this notice in a prominent place.

b. Oral Notice

1. If a client makes any complaint to anyone other than the attorney or paralegal representing that client, that person should ask if the client wants to file a grievance. If a client makes a complaint to the lawyer or paralegal representing the client, and the lawyer or paralegal believes the client may want to file a grievance, the lawyer or paralegal will ask if the client wants to file a grievance.

2. If an applicant for services or a client asks any question about the grievance procedure, a lawyer, paralegal or secretary from the office will answer the question with specific information about the grievance procedure and, if the client or applicant has not yet received or no longer has a written notice of grievance, will offer to give or send the client or applicant a copy of the notice.

1304. Grievance Procedure

a. General

The same procedure will apply to both grievances about denial of assistance, which generally are made by applicants for legal assistance, and grievances about the quality of legal assistance provided, which are generally made by clients and former clients.

b. Grieving to Supervising Attorney

A client or applicant who is dissatisfied in any way with either the denial of services or the quality of the legal assistance provided him or her at a Legal Services Alabama office may file a grievance orally or in writing to the Supervising Attorney for that office. The Supervising Attorney will prepare a brief written statement of any oral grievance and will create a grievance file for the client into which the Supervising Attorney will place this statement.

c. Grievance Against the Supervising Attorney

1. If the client or applicant has a grievance with the Supervising Attorney, the client or applicant will make the grievance directly to the Executive Director. In this event, the Supervising Attorney will prepare a grievance file and include in it a report of the Supervising Attorney's version of the facts.

2. The Executive Director will thereafter promptly investigate the grievance in the same manner as investigations required of Supervising Attorneys pursuant to 1304d and proceed to its disposition as set forth in 1304g.

d. Investigation by the Supervising Attorney

1. The Supervising Attorney will promptly consider and investigate any client grievance other than one filed against the Supervising Attorney. In the course of

this investigation, the Supervising Attorney will speak to any employee involved and make every reasonable effort to speak with the client or applicant.

2. The Supervising Attorney will also look at the client's file, check any relevant time records and, for any grievance involving court representation, check the State Judicial Information Service on line.

3. The Supervising Attorney may request written statements from any employee who has been in contact with the client or applicant. The Supervising Attorney will take such other steps as he/she deems necessary during the investigation in order to seek a resolution.

e. Disposition by the Supervising Attorney

1. The Supervising Attorney will make a decision within 10 working days after receiving notice of the grievance.

2. If the Supervising Attorney determines that the grievance is well-taken, the Supervising Attorney will try to resolve the problem by changing what LSA is doing for the client or applicant.

3. If LSA has wrongly denied representation, the Supervising Attorney will offer to open a file for the applicant.

4. If the Supervising Attorney successfully resolves the problem, he or she will document the resolution in the client grievance file and will send or email the Director for Advocacy a brief statement about the grievance and its resolution.

5. If the Supervising Attorney finds that the grievance is without merit, the Supervising Attorney will send or give a letter to the client or applicant advising of this decision and explaining the procedures for appeal. This letter will explain that the client or applicant has 10 working days from the date of receipt within which to appeal to the Executive Director. It will also explain that the client or applicant can appeal either by writing an appeal and giving it to the Supervising Attorney or by talking with the Supervising Attorney and asking the Supervising Attorney to write down the contentions of the appeal. In either case, the Supervising Attorney will promptly transmit the appeal to the Executive Director.

f. Consideration by the Executive Director

1. If the client or applicant appeals the disposition to the Executive Director, the Supervising Attorney will forward to the Executive Director a report of his or her investigation, including any statements from the client or applicant and from any LSA employee, and a statement of the disposition of the grievance. The Executive Director or her designee will promptly review and evaluate the grievance file supplied by the Supervising Attorney.

2. If the Executive Director or her designee determines that further investigation is needed, she or her designee will conduct that investigation.

3. If the Executive Director or her designee conducts any further investigation, a written report will be prepared on that investigation and included it in the grievance file. In any event, the Executive Director will include either an investigative report or a statement in the grievance file.

4. If a client files an initial grievance against a Supervising Attorney, the Executive Director or her designee will conduct an investigation and include the results of the investigation in the grievance file.

g. Disposition by the Executive Director

1. Within 10 working days after receiving an appeal or receiving any initial grievance against a Supervising Attorney, the Executive Director will send the client or applicant a letter with the disposition of the grievance and will provide the supervising attorney with a copy of that letter.

2. If the Executive Director's decision is in favor of the client or applicant, she will advise the Supervising Attorney to take steps to meet the needs of the client or applicant.

3. If the Executive Director's decision is adverse to the client or applicant, the Executive Director will send a letter to the client or applicant.

(a) The letter will explain the right to appeal to the Committee. This letter will explain that the client or applicant has 10 working days within which to appeal to the Client Relations Committee. The time limit runs from the date the client or applicant receives the Executive Director's decision.

(b) The letter will also explain that the client or applicant can appeal either by writing an appeal and giving it to the Executive Director's designee or by talking with the Executive Director's designee and asking the designee to write down the contentions of the appeal.

(c) In either case, the Executive Director will promptly transmit the appeal to the Client Relations Committee.

(d) Finally, the letter will explain that the client or applicant has a right to make an oral statement to the Client Relations Committee, and that if the client or applicant wants to exercise this right, he or she should mention in the appeal his or her desire to have a member of the Client Relations Committee call.

h. Consideration by the Client Relations Committee

1. Any action by the Committee requires at least a majority of the Committee.

2. The Committee will review the entire grievance file.

(a) The Committee will determine whether it has sufficient information upon which to base a decision or whether it needs to obtain further information.

(b) If the client or applicant has requested the opportunity to make an oral statement, or if the Committee for any other reason desires to speak by phone with the client or applicant, a member of the Committee will call the client or applicant and make note of such statement.

3. If the Committee decides to hold a hearing, it will afford the client or applicant an opportunity to appear in person and an opportunity to bring another person. A majority of the Committee constitutes a quorum for purposes of a hearing.

4. If the Committee does not conduct a hearing, it will issue a written decision to the client or applicant and to the Executive Director within 15 working days from receipt of the appeal.

5. If the Committee conducts a hearing, it will issue a written decision to the client or applicant and to the Executive Director within 15 working days from the date of the hearing. The decision of the Committee is final.

i. Files

1. A file containing every grievance and a statement of its disposition will be established and preserved for examination in the LSA office wherein the grievance originated.

2. For any grievance not resolved by the Supervising Attorney, another copy of the grievance file will be maintained in the Executive Director's Office and in the Committee's files and records of proceedings.

j. Reports

1. Each month, each supervising attorney will submit to the Executive Assistant a report stating whether any client filed a grievance and the status of each grievance filed.

2. The Executive Assistant will give the Client Relations Committee with a copy of each report after redacting any client-identifying information.

1305. Grievances Relating to Negligence, Error or Omission for Which Monetary Relief May Be Claimed

a. Upon receipt of a grievance, the Supervising Attorney will determine (1) whether the grievance alleges in substance a negligent act, error or omission on the part of a LSA employee, and (2) whether the aggrieved party alleges or may have sustained injury or damages as a result of the alleged negligent act, error or omission for which monetary relief may be claimed.

b. If the Supervising Attorney determines that the grievance is possibly in the nature of a claim for monetary relief, the Supervising Attorney will notify the Executive Director.

c. The Executive Director or her designee will determine whether to notify the liability insurance carrier of the grievance.

d. After evaluating the grievance and after any conversation with the liability insurance carrier, the Executive Director will advise the Supervising Attorney how to proceed with the grievance. The Supervising Attorney will then act in accordance with the instructions of the Executive Director or her designee.

1306. Remedies

The foregoing procedures are intended to be cumulative of, and not a substitution for, any other or different procedures available to clients or applicants dissatisfied with the legal assistance rendered by LSA, including, but not limited to complaints through the courts or the Alabama State Bar or other bodies or agencies charged with the responsibility for monitoring services rendered or conduct by attorneys.